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KASHMIR

VOL. II

V. K. Krishna Menon's Speech
in the Security Council
8 February 1957

पं० इन्द्र विद्या वाचस्पति प्रदत्त संग्रह

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भूतपूर्व उपकुलपति द्वारा पुस्तकालय गुरुकुल कांगड़ी विश्वविद्यालय को दो हजार पुस्तकें सप्रेम भेंट

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UNITED NATIONS SECURITY COUNCIL
NEW YORK

स्टाक प्रमाणीकरण १९८४-१९८५

इन्द्र विद्यावाचस्पति
चन्द्रलोक, जवाहर नगर
दिल्ली द्वारा
गुरुकुल कांगड़ी पुस्तकालय को
भेंट

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Text of Shri V. K. Krishna Menon's speech in the Security Council on Friday, 8 February 1957.

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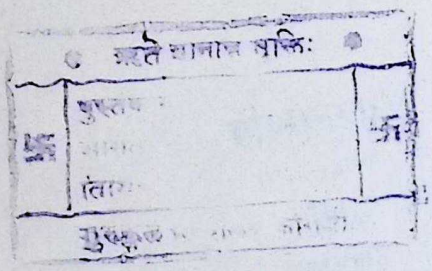

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Krishna Menon: Although India is not a member of the Security Council, nevertheless, since I am the first representative other than the President to speak here since his assumption of that high office, I wish to tender to him the congratulations and the esteem of my Delegation and my country.

I should also like to take this opportunity to express our tribute to our distinguished colleague, Carlos Romulo, a great Asian and a very old and trusted and valued representative here at the United Nations.

Before I address myself to the tasks which are before me this afternoon, I should like to ask the indulgence of the Council if I may refer to a matter which, although not directly connected with the subject of Kashmir, arises from the proceedings of last Thursday before this Council. On that occasion, the representative of the United Kingdom, in expressing his gratification with regard to the relations between his country and Pakistan and India, said:

> Only the voice of envy would, I think, deny that the Englishmen, the Scots, the Welsh and the Irish—for, on a small scale, we too have our diversity—all those who served the Crown in the old imperial India and in the transitional period came to feel a deep devotion to the peoples among whom they passed their lives ....(S/PV. 765/Corr. 1)

Not only do I agree with this statement, but I wish to refer to it because, in the copy of the verbatim record which I have before us, the reference is to the "voice of India" rather than the "voice of envy".

I am quite aware of the fact that my colleague from the United Kingdom and his mighty empire can take care of themselves. Nevertheless, since these words have been telegraphed all over the world, since there is so much bitterness and difficulty in the world as it is, and since this particular issue, in view of the virulent expressions of opinion in the British press, will create further and unnecessary reactions in India, as it has already done, I should like to take this opportunity, if my colleague from the United Kingdom would not mind, since it is really his prerogative, to say that the correct version, was "the voice of envy," the version that most delegations heard—although some people heard it the other way—I say this because I hope that this correction will go around the world in the same way in which the unfortunate other phrase did.

This afternoon, for the convenience of the Security Council, I should like to outline roughly what my Government intends to submit. And in order that the Security Council may be in a more patient mood—not that it was otherwise before—I should like to say at once that we hope and intend that this particular intervention of ours will be concluded this afternoon.

It is my intention within a brief compass to answer some of the statements made by my distinguished colleague the Foreign Minister of Pakistan. In doing so I shall not attempt to answer them paragraph by paragraph or line by line because that would be a very laborious and tiresome process and it would take the time of the Council unnecessarily. I also want to say that it is not my intention, nor the desire of the Government of India, to refer to the many personal aspersions and insinuations in that speech because that would be of no interest to the Member States and, since we are neighbours, I suppose we can take it. I therefore only propose to deal with those aspects of the matter which are directly related to this problem and it is only where the conditions in India are cited as being relevant to the consideration of Kashmir in regard to discrimination and so forth that I propose to correct impressions that have been created.

I said last time that many of those quotations, either placed in their proper context or read with a whole paragraph or section

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would probably, in the majority of cases bear a different meaning. That is the purpose of this part of the intervention and I will try to make it as brief as possible.

The first of the series of allegations, arguments and contentions is with regard to the position of India in relation to Kashmir. As is well known Kashmir is—by accession, by the constitutional law of India, or of Britain as it was then, and the recognized process of international law—an integral part of the Union of India. It is the contention of the Pakistan Government sometimes that this is not the case. Sometimes the contention is that this was brought about by "force and by fraud". The purpose of refuting this is not merely to ensure that this misstatement did not remain uncorrected but also to emphasise that it is basic to the consideration of the whole question because it explains how the two countries got into this position.

First of all, there was the use of force in Kashmir. India used force in Kashmir, on the territory of Kashmir, but the element of force which brought about or speeded up the process of accession and necessitated the ending of the vacillation of the Maharajah of Kashmir has been rightly spoken of by the then Governor-General of India, Lord Mountbatten, who said that the accession had indeed been brought about by violence, but the violence came from the tribes, for whom Pakistan and not India was responsible.

As far as we are concerned, the facts which I would invite Member States around this table to bear in mind are: first of all, to see how we got in there. We got in there for two reasons: first to protect a neighbouring area which was invaded; and it is my humble submission that even apart from any question of accession, even apart from the Cabinet's document and the partition of India—and I will not refer to particular countries—if another small neighbouring country was similarly invaded it would be the duty of a country to go to its protection even if no other circumstances existed. What is more, in this particular case, the history of the last hundred years shows that the Power which ruled India—and we are the successor State—had always gone to the protection of the Indian princely States when they were in trouble of one kind or another.

Over and above that, in this matter there was the fact of accession to which I have referred and that is why it has been contended that this was brought about fraudulently. I want therefore to refer to the circumstances of the alleged "force and fraud". It was contended on the last occasion that India became independent on 15 August. Then what was the hurry for the Maharajah of Kashmir to ask for a standstill agreement on 12 August? The implication is that on 12 August there was already a conspiracy between India and the Maharajah in order to establish some relations. I am surprised, as the Council would be if it looked into the documents, at this particular statement. A document was circulated to members of the Security Council containing the telegrams that went from the Government of Kashmir to the Government of Pakistan and the Government of India, and in this document these telegrams bear identical dates, that is to say, they were sent on the same day. So if it can be questioned why the Maharajah asked for a standstill agreement with India three days before the independence, we could equally ask why the Maharajah had asked for a standstill agreement with Pakistan two and a half days before their independence—Pakistan was born half a day before us.

So there was here no attempt to force any position. Indeed, even if it had been the desire of India to bring about that act of accession, there would have been plenty of time before then to get things done. Indian troops could have been there on the same day when our independence was declared; there would have been a new Indian Government installed with the capacity to give orders without any British authority.

I do not want to ask the Council merely to take note of the assertions and submissions I make but there are plenty of

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authorities on this matter relating, on the one hand, to the fact that India made no preparation for armed intervention—and those authorities are British authorities.

Secondly, there are published works on Kashmir, in the main hostile to us, largely based on ignorance of facts, from which I propose to quote on this particular question. One of these is a book called *Danger in Kashmir* written by Korbel, a Czechoslovak who was at one time chairman of UNCIP. Generally speaking his conclusions are not those which bring the matter up to date, but in this particular case he says:

> There is no direct evidence concerning the conversations between Mountbatten and the Maharajah. There is no reason to believe that the Pakistanis are mistaken in their conviction that Mountbatten from the beginning connived with the Government of India to force the Maharajah and with him the State into accession. Mountbatten was very anxious to dispel any doubts about his own position. Speaking before the East India Association in London shortly after, he said:
>
> 'In the case of Kashmir I went personally and saw the Maharajah and spent four days with him. Every one of those four days I persisted with the same advice', and he went on to say: 'Ascertain the will of your people by any means; join whatever Dominion your people wish to join by 14 August of this year. Had he acceded to Pakistan before 14 August the future Government of India has allowed me to give His Highness an assurance that no objection whatever would be raised by them'.

—in fact the phrase we used was that we would not regard it as an act of unfriendliness.

The same thing appears in another work, again written by an Englishman who formerly belonged to the British-Indian Army and was on the frontier—and most of you know the views of officers of that kind. The book on the whole is not favourable to us.

Lord Birdwood, a British expert in India, accepted the truth of this position, that is to say, that there was no fraud.

Mr. Korbel stated that if we accept this, then we must refuse the Pakistan contention that there was some form of diabolical plot between the Maharajah and the Government to stage a situation which would precipitate accession to India.

I shall not read out all these documents, because it will prolong the proceedings. The quotation from Lord Birdwood, however, is on page 42 of his book, *Two Nations in Kashmir*. I should like to stress the words in the last quotation that there was no previous plot.

A document has been circulated containing the joint statement by the Chiefs of the Indian Staff of the Army, Navy and Air Force. This was in August 1947, when the Commander-in-Chief of the Indian Army was General Lockhart, a British officer. The Air Marshal was another British officer, Air Marshal Elmhurst. The Navy was commanded by another British officer, Rear Admiral Hall, who was lent to the Royal Indian Navy, as it then was. All of these people have categorically made the following statement:

> The following is a true time-table of events, as regards decisions taken, plans made, orders given and movements started in this matter:
>
> On October 24, the Commander-in-Chief of the Indian Army received information that tribesmen had seized Muzaffarabad. This was the first indication of the raid.
>
> Prior to this day, no plans of any sort for sending Indian forces into Kashmir had been formulated or even considered. On the morning of October 25, we were directed to examine and prepare plans for sending troops to Kashmir by air and road, in case this should be necessary to stop the tribal incursions. This was the first direction which we received on this subject. No steps had been taken prior to the meeting to examine or prepare such plans.
>
> On the afternoon of October 25, we sent one staff officer of the Indian Army and one of the Royal Indian Air Force by air to Srinagar. There they saw officers of the Kashmir State Forces. This was the first contact between officers of our headquarters and officers of the Kashmir State Forces on the subject of sending Indian troops to Kashmir.
>
> On the afternoon of October 25, we also issued orders to an infantry battalion to prepare itself to be flown at short notice to Srinagar in the event of the Government of India deciding to

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accept the accession of Kashmir and to send help.

On the morning of October 26, the staff officers mentioned in paragraph 4 above returned from Srinagar and reported on their meetings with officers of the Kashmir State.

On the afternoon of October 26, we finalized our plans for the dispatch by air of troops to Kashmir.

At first light on the morning of October 27, with Kashmir's Instrument of Accession signed, the movement by air of Indian forces to Kashmir began. No plans were made for sending these forces, nor were such plans even considered before October 25, three days after the tribal incursions began.

Now this is not a document in the form of an affidavit which we have obtained from these officers. This is a part of the Indian archives, a part of the defence records of the Government of India.

It is true, as I have said, that we used force. But against whom did we use force? We used force against the invaders—against those who committed rapine and murder. The force on the other side was used against the people of Kashmir, who were being aggressed against and who were being subjected to rapine and plunder and loot and arson. There was force used by the two parties who are now here. But so far as our force was concerned, it was used against the invading people and the other force was used against the populations of the countries.

It does not require much documentation to understand this position. If the tribal forces, which at first numbered 20,000 and then increased to 73,000, according to the estimates, which came into Kashmir over this vast expanse of Pakistan territory, well armed and well equipped for these purposes, were "liberators" and were "friends" of the Kashmir people and if they had been wanted by the people, they would have been welcomed as liberators. The Indian Army was welcomed as an army of liberation. These other forces, however, were not so welcomed. They were regarded as enemies. They subjected the populations, as I stated the other day, to cruelty. When the country was rid of the bulk of them, the people were happier. It was not a question of our using force or fraud of any kind.

The Foreign Minister of Pakistan stated on 16 January that eleven proposals had been put forward each of which Pakistan accepted and each of which India rejected. It would be an imposition upon the Security Council for me to repeat what I said about this matter the other day. However, since no intelligent appreciation of the present situation can be arrived at except by a study of these matters, I would merely like to say, to save the time of the Council, that the first reference to this matter appears in the statement by the Foreign Minister of Pakistan in the verbatim record, S/PV. 761, pages 19 to 21, and that the answer made on behalf of India appears in the verbatim record, S/PV. 764, pages 7 to 37. Therefore, in approximately thirty pages, which must run to about 8,000 or 9,000 words, we have examined and refuted and rebutted each of these allegations. There is only one on which it might be claimed that there is a qualified rebuttal, and that is with regard to the issue of arbitration. We spoke at great length on that question, and I intend, so as to save the time of the Council, to circulate at the end of the meeting, the official proceedings related to it which amount to two or three pages.

The position was that we were willing to go to arbitration, but we were not willing to let the arbitrator decide on what was going to be arbitrated. That would be a travesty of justice and a denial of all the principles and rules of law. A lawyer, no matter to what system of jurisprudence he belongs, will say that it is not for the judge to decide beforehand what are the issues on which he is going to try the case except within the context of a case that is presented. That, therefore, is what we objected to.

The Government of India has all along, that is, from the beginning of this dispute when my predecessor, Mr. Gopalaswami Ayyangar, spoke here and on the last occasion when we met with the United Nations representative, Dr. Graham, always main-

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tained that we do not subscribe to any position which was *ultra vires* of the resolutions of the Security Council. We were prepared to examine any proposal within that ambit. However, it is not for a commission or a representative to go beyond that and form some new principle. That is why the use of arbitration was declined by us. I believe that a fair examination requires an understanding of this situation.

I am happy that with regard to several of the answers I have given my friend from Pakistan either has accepted what we have said or does not think it worthwhile pursuing. The first relates to the massing of troops by the Union of India. It is not possible in our country, even in defence matters, to deal with things in secrecy. There is Parliament, there are questions in Parliament, there are newspapers, there are monies to be provided by budgetary drafts; but on a definite allegation that was made, I replied, on behalf of my Government of which I have the privilege to be a member, with a categorical denial that there had been any massing of troops or any importation of new troops into Kashmir. Indeed, on the day when we were supposed to be preparing for this adventure, the more important generals of our army, as I said the other day, were playing a polo match in Calcutta. It may be that in some cases generals are not thought to be an essential part of an army, but our army requires them. So, that has not been pursued.

My Government asserts—not alleges, but asserts—that in the area under Pakistan occupation, which Pakistan has illegally, contrary to its own law, contrary to our law, contrary to international law, contrary to the decisions of this Council and contrary to the provisions of the Charter, incorporated in its Dominion, airfields capable of taking military planes have been prepared. I gave the measurements of these airstrips obtained from our own information—every Government has its own way of discovering these things—and I said that some of them had runways about 2,000 yards long which had been extended. The answer of my colleague from Pakistan was that I was what I looked—an ignoramus—and therefore did not know what I was talking about. He said that it takes 3,500 yards for an ordinary jet plane to take off. First of all, I was not talking about luxury jet planes; I was speaking of fighter planes, and in any case quite recently—and I am sure that the representative of the United Kingdom will not mind my mentioning this—that very beautiful plane, the Comet, arrived at Delhi at our airport there. We have only a 2,100 yard runway, but the Comet landed and took off again. There was no Indian rope trick about it; the Comet just landed and took off again under its own power.

We happen to know what the Pakistan air force consists of; we happen to know what runways are required for different purposes, and the strips of 2,000 yards they have there are capable of being used for the fleet of Sabre jets that the Pakistan Government is now possessed of. Therefore, I make this correction for two reasons: First of all, one likes to be in the right when one makes a quotation. Second, the fact does remain that this is no longer a country administered by local authorities such as UNCIP, as it was. It is no longer a country where, *de jure* at any rate, the rights of defence and external affairs are vested in the Jammu and Kashmir Government and, therefore, in the Union of India. It has become a military outpost of our neighbouring State.

I shall not labour the point with regard to the distance of Pakistan military concentrations—not necessarily against us—but they are normally ones which, when hostilities or the contingency of hostility arise, become a matter that has to be taken into consideration, and my submission in reply to the contradiction of the figures I have given Mr. Firoz Khan Noon is that I am prepared—as I hope the Council will be prepared, and as I am sure Her Majesty's Government will be prepared because they rely on them —to rely on the ordinance survey maps of India, which are supposed to be very good;

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in fact, they are borrowed by a great many geography libraries in the world, and I am told that the British Government started them one hundred years ago. These distances are air miles in the majority of cases, and sometimes they are the distances by military roads.

My colleague has argued that all the facts I gave about the conditions in Kashmir were no answer for self-government or self-determination for the Kashmiri people. As a principle, I could not agree more. It is an old maxim—becoming somewhat worn out in these days of collective States—that good government is no substitute for self-government. But that is not the issue here. What my Government was submitting was that, after having been hung up by the dilatory procedures which did not bring about the plebiscite which was the purpose of the agreement of 13 August 1948, the Government of India, having the responsibility of the Government of Kashmir and the responsibility for the economic, social and political development of its people, had introduced the necessary measures, and that certain results had been achieved.

These things have to be placed side by side with the picture on the other side when we speak of a plebiscite. For example, if on one side there are open assemblies, free discussion, criticism, opposition and, what is more, 70,000 people going in from outside, while on the other side there is no such thing and, what is more, when even the parent State itself has had no elections whatsoever, then, of course, there are two pictures that are rather different. That is the only purpose of my putting this forward apart from the fact that, in my humble submission, the application of the minds of the Member States represented in the Security Council to this matter would, as I shall point out later, have to be conditioned largely by the conditions in South-East Asia, by the fortunes of the people of Kashmir on either side, and by those of the peoples of India and Pakistan. I do not claim to speak for them in the same way that my colleague spoke of the necessity of guarding our reputation.

There are two other matters before I go into the main matter under this particular section. One relates to the Constituent Assembly. That covers not only the speech made by my colleague but also the position taken up by the Security Council, and I beg representatives to listen to this very carefully. The Council passed a resolution the other day, and it thought that it was repeating a resolution which it had adopted some time ago. My Government made the same statement that was made by my predecessor Sir Benegal N. Rau from the seat of India at that time. The Constituent Assembly of Kashmir did not establish any new relations between the constituent state of Kashmir and the Union of India. It did not create anything. It was what the international lawyer calls a declaratory act rather than a creative act. As I say, it created no new relationship. That relationship had existed for a very long time.

I have said all this before but there are two facts to which I did not draw the Council's attention. One is that—and here I speak from memory—somewhere about 1949 when the Indian National Constituent Assembly was sitting, Kashmir elected four members to that Indian National Constituent Assembly—that is, the Assembly of the Union which was to form the federal constitution. Kashmir elected four members, and Pakistan protested to the Commission—on the same basis, namely, that it was an illegal action, an action of our jumping the gun. We were, it was alleged, anticipating what was to be done by the plebiscite. We took the view, however, that we could not, under our constitution, or, indeed, under the Declaration of Human Rights, deprive any part of a people of the rights that it enjoyed otherwise. So we went on in that way. Pakistan protested to the Commission, and this is what the Commission said:

> In the Commission's view it is difficult to oppose the measure of the Indian Government on purely legal grounds. The Commission did not consider there was any useful purpose to be

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served in approaching the Government of India on this matter.

If this had been an illegality the Commission—which had meticulously gone into every point and had been very careful to remind us whenever we even suggested something that it thought was straying from the path—would have told us it was wrong. That was four or five years ago. There were no protests at the time, and therefore the relationship of a union to a constituent state was made.

May I say with all respect that, in our submission, the Security Council was misled into believing that on 26 January some act of annexation was going to be carried out. No annexation was contemplated. It could not have been contemplated or carried out, because, as the Prime Minister of Kashmir asked: how can you annex your own country? This territory has already been part of India for a long time.

I have before me the various dates in the progress of this Constituent Assembly, from 1944 onwards—in other words, long before there was a dispute over this matter. As I have already pointed out, the present phase arose from the proclamation of the Maharajah.

My Prime Minister has pointed out in a speech, and I believe has brought to the attention of the United Kingdom Government, that the challenging of the position of the Constituent Assembly was in fact the challenging of an Act of Parliament—I said that myself here, but, of course, my voice does not carry the same weight as that of my Prime Minister. Thus, there was no crisis; no annexation took place; and the Security Council has again been misled. As the Council is aware, it has also been misled with regard to Pakistan's intervention; in fact, it is because of that fact that this whole matter has arisen. And this is another occasion on which the Council has been misled.

All that happened on 26 January was that the Constituent Assembly was dissolved.

I have been asked by my Government to submit the following to the Security Council. Let us assume, for the sake of argument, that the Government of India had undone the processes of the Constituent Assembly and had undone the work which that Assembly had carried out for a period of five years. What would have happened? The entire financial integration of this State with India, the functioning of the Controller and Auditor-General of India, would have been thrown out of gear. The authority of the Controller and Auditor-General of India in respect to financing applies not only to Kashmir, but to every State in India. Every State in India survives financially by means of subsidies from the centre; that is our taxation system. The States have certain local rights of taxation, but their main expenditure is covered by subventions from the central revenues. In addition to the financial system, the entire judicial system in Kashmir would have gone to pieces. There would have been no courts, no high court judges; the judges are appointed by the President of India. There would have been no jurisdiction by the Supreme Court, in which is vested the fundamental rights of every citizen of India and from which every citizen can obtain a writ—indeed, Sheikh Abdullah tried to get a writ. The customs barriers which have been abolished, thereby contributing so much to the prosperity of Kashmir, would have been reinstituted. In various other respects the State would have been thrown into chaos.

Now, I have not made those observations in order to defend our attitude in this matter. We need no defence, because we have acted constitutionally and in terms of the Charter; we have not contravened any Security Council resolution. I shall revert to this question later.

We only wish, in all humility, to say this to the Council: In adopting the most recent resolution, the Council was taking a decision which, if we had been foolish enough to implement it, would have thrown the

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area in question and the four million people who live there into chaos. There are various popular ways of expressing this, but that is what I wish to submit to the Council.

Mr. Firoz Khan Noon, in his last statement to the Council, made a large number of quotations, saying in each case that the quotation either proved his case, refuted something that had been said, or revealed that we had misstated the facts. The Council may remember that, when Mr. Romulo, who was then President, was kind enough to ask me to offer my observations, I said that when the extracts that had been cited by the Foreign Minister of Pakistan were fully quoted and placed in their proper context, the picture would be rather different.

One of the quotations which Mr. Noon made in this connexion was the following:

(i) In response to the Commission's truce proposals of 15 April 1949, providing for withdrawal of the entire Pakistan Army, the Government of India agreed to withdraw a very small number of their forces. According to the Commission. 'This reduction was considerably less than had been suggested in the Commission's plan for the three-month period and in no case could be considered to constitute the bulk of the Indian forces'. (S/PV. 766. page 8).

Now, I should like to read out the entire paragraph of the Commission's report from which Mr. Noon took the above mentioned extract:

In response to the Commission's proposals of 15 April, the Indian representative (annex 20) said that the presence of thirty-two battalions of Azad Kashmir forces was a factor which the Government of India had to take into account in determining the phasing of its withdrawals. He pointed out that during the seven-week period for the withdrawal of Pakistan troops, the Government of India could not, with due regard to the security of the State (Krishna Menon: and the Government of India was responsible for the security of the State) to the maintenance of law and order and to the sealing-off of the border against unwarranted infiltration, withdraw more than twelve battalions. (This reduction was considerably less than had been suggested in the Commission's plan for the three-month period (Krishna Menon: the period referred to now is seven weeks) and in no case could be considered to constitute the bulk of the Indian forces.) He wrote that further withdrawals would depend upon and would have to be regulated according to the actual disbandment and disarming of the Azad Kashmir forces.(S/1430, paragraph 236).

Thus, Mr. Noon's quotation gave only part of what had actually been said. I have before me a number of similar quotations by Mr. Noon, but I shall deal with only one other.

Mr. Noon said:

(iv) The Prime Minister of India rejected all proposals for the demilitarization of the State that were put forward by Sir Owen Dixon, the United Nations representative for India and Pakistan. In the end, Sir Owen Dixon 'became convinced that India's agreement would never be obtained to demilitarization in any such form or to provisions governing the part of the plebiscite of any such character as would in my opinion permit the plebiscite's being conducted in conditions sufficiently safeguarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be impaired'. (S/PV. 766, page 11).

Standing alone, this is a very stark statement. But the fact is that the whole of the discussion in question took place in the context of Sir Owen Dixon's saying, "If the plebiscite is not the method, we must try and find something else." That was not quoted by Mr. Noon, but it is what Sir Owen Dixon was saying. The fact remains that, under the Security Council resolutions, India's agreement to the course to be pursued in these matters was a prior conditioning to the carrying out of the plebiscite. It is therefore not as if something reasonable and *intra vires* had been put to us and that we had rejected it.

I shall refer to only one more quotation, because, while I said I would not go into any matters of personal insinuations, the Foreign Minister did refer to a part of my statement in which I was supposed to have misquoted him. Had I done so deliberately it would have been an offence for which I should apologize not only to him, but to the

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Council and to my Government. This is what Mr. Noon said:

Before I close my remarks I should like to refer very briefly to the incident the other day when I interrupted Mr. Krishna Menon's speech, for which I am very sorry. I was not not aware of the practice of the Security Council. But the Council will recall Mr. Menon said that I had said in my statement that Pakistan was not bound by any international agreement—and there he stopped. I interrupted and said that that was not the whole of my remarks, and that he had quoted only half the sentence. I am grateful to Mr. Menon for the fact that, upon that interruption, he read the whole remark, which was to the effect that Pakistan is not bound by any international agreement regarding this case, except the two resolutions of the Security Council. Thus, he had omitted to read the second part of the sentence, 'except the two resolutions of the Security Council'.

That reminded me of the story of a young Mussulman who was one day chided by his priest in the mosque that he did not say his prayers regularly. The young man said, 'But, Sir, it is written in the Holy Koran that one should not go near prayer'. The priest was astounded, and said, 'Bring me the Holy Koran'. The young man quickly brought the Holy Koran to the priest, and showed him where it is said 'Thou shalt not go near prayer'. But the priest said, "Why don't you read the other half of the sentence, which says, 'When thou art in a condition of drunkenness' "? (S/PV. 766, page 43).

I will come to that in a moment, but let me just read what I said:

The Foreign Minister of Pakistan said that in regard to this Kashmir matter he had no other international obligations than those that are be found in these resolutions. (S/PV. 763, page 87).

I do not know what that means. Then I went on:

I agree with that, but to a limited extent in the sense that we have to interpret this agreement in the terms of these two resolutions to which I have referred, but if it means that the international obligations of the Charter are not binding, then I join issue with him. I am prepared to confirm that I subscribe to the view that in the discussion of any procedure, of any particular decision, of any agreement reached, these resolutions are what are binding in the circumstances I have submitted to you. But it would be wrong, so far we are concerned, for a Member State to argue that there are no other international commitments. (Krishna Menon: That is a truism) The Charter is a commitment for every State, and when the time comes to sum up these observations at the conclusion of these meetings of the Security Council, we shall fall back upon our bounden duty to ask all of you to address yourselves to the provisions of the Charter." (Ibid.)

When the interruption came, Mr. Noon said, "I am sorry, but that is a misinterpretation of my statement". The President said that he had no right to interrupt, and I continued:

I will read out the quotation. I thought that by not doing so before I could save time, but it will be seen that my slow procedure is the quickest in the long-run. The representative of Pakistan said.....(Ibid., page 88).

I then read out the whole of the paragraph to which he has made very generous reference. Now we come to this quotation from the Holy Koran. The Holy Koran is the scripture for a very considerable part of our population, and it is held in respect by the remainder, and I regret that the quotation from it invited the degree of levity it did. What was the gravamen of the charge? It was stated that I had quoted only a part of the sentence, but let us look at the Holy Koran itself. The representative of Pakistan said:

The young man said, 'But Sir, it is written in the Holy Koran that one should not go near prayer'. The priest was astounded, and said, 'Bring me the Holy Koran' The young man quickly brought the Holy Koran to the priest, and showed him where it is said 'Thou shalt not go near prayer'. But the priest said, "Why don't you read the other half of the sentence, which says, 'When thou art in a condition of drunkenness' "? (S/PV. 766, page 43).

May I follow this distinguished priest and read the whole of the sentence from the Holy Koran? It states:

O ye true believers, come not to prayer when ye are drunken (Krishna Menon: that is as far as it went before) but wait till ye can understand what ye utter, nor when ye are polluted, unless ye be travelling on the road, until ye have washed ye.

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That is to say, let us not invoke moral laws unless we are prepared to use them ourselves, so that even in this quotation from the Holy Koran we have this position.

Now I come to the most important part of the statement made. I am not going to refer to quotations—I am going to put them all on one side—but I wish to deal with the question of discrimination against the Moslem minority in India. Of course, this minority numbers nearly 50 million. In regard to this minority, various allegations have been made. It has been said there is no civil liberty in India, there are frequent communal riots, and there is discrimination against the people of Moslem faith in regard to our public services. In fact, it is what may be called a captive or police State. I would not have referred to this, but for two reasons.

First of all, it is of some importance, not only to my country but to the world, that we maintain a high level of parliamentary democracy, and to be told before the Security Council that these are the conditions is not so much a slur upon us as it is a disservice to this cause, particularly in our part of the world. In a country where, in the next month an electorate of 193,129,924 people are entitled to vote to elect 494 people to the Lower House of Parliament and 3,102 people to our State legislatures, using 200,000 polling stations and 2,960,000 ballot boxes for exercising their secret ballot, such a picture of a police State is far from the facts, but it is not so much in defence of our democracy that I raise this, but to point out that the argument was based on the statement that all these people are under our "occupation".

I was very pained to listen to two aspects of this question. I did not conceal from the Security Council the fact that we have a public security act, indeed, I could not, because it has been discussed in Parliament. We hope that when our democracy becomes more established this will become merely one of those things which do not operate, as it is in the United Kingdom, for example, under the emergency powers. But we have very considerable problems of social order. We have had a background in our independence and in the aftermath of independence of communal friction. There are various other cases of subversion, but, as I said to the Council the other day, this Act is exercised under very strict safeguards. A man has to be told what he has been arrested for, and he can go before a tribunal and claim to be heard. If the tribunal says that he must be released, then we have to release him.

Over and above that, he can invoke the right of *habeas corpus,* and all these people did. But we cannot dictate to the courts that the high power writs should be *mandamus certiorari,* where *habeas corpus* should be given. That is for the court to decide.

But, of course, our friends on the other side have legislation—I hesitate to say similar legislation—or ordinances for this purpose. Far be it from me to say that two wrongs make a right, but I think we must get some sense of proportion on this. Since Pakistan came into existence, imperfect as our information is, 251 political leaders have been arrested or detained without trial. This included Mr. A. K. Fazl Huq; Mr. H. S. Suhrawardy, the present Prime Minister; Mr. Ataur Rahman, the ex-Governor of East Pakistan; Dr. Khan Sahib, veteran of the national movement and now Chief Minister of West Pakistan; Mr. Khuhro, Chief Minister of Sind, Mr. Fazl Ullah, Ex-Minister of Sind, etc., etc.,—a whole list of Cabinet Ministers or ex-Cabinet Ministers. Then, of course, there is the veteran, Mr. Abdul Ghaffar Khan, well-known to the world as the "Red Shirt Leader", who had been detained for years without trial inspite of all the representations in friendliness; and we have the right to do so. In addition, dismissal from ministerial office has not been an unusual occurrence.

But in the Pakistan-occupied area of Kashmir, the present President of the Azad Kashmir Government, the ex-Minister,

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Mr. Abdul Qaiyum, then Mr. Abdul Naqi of Mirpur—all these have been defained. There are a number of other cases, including 340 political workers who, according to the Moslem Conference memorandum to the Pakistan Constituent Assembly, were detained after the preliminary disturbances during which a large number of Poonchis were killed. According to the leader of the Azad Movement at that time, 130 are still in detention without trial.

I have read this out, not with any gusto, not with any pleasure, but it is necessary to see the perspective of the picture, and I confess that in infant democracies, a degree of limitation on freedom is sometimes academically reprehensible, but there are considerable safeguards in our case because it has to be re-passed by Parliament every six months.

But what grieved my delegation most was to tell the world that in our public services, in our Army and our various other public avenues of expression, religion was a bar. That would be unconstitutional and, what is more, under our law, would be punishable by imprisonment.

The Foreign Minister of Pakistan referred to the Public Services examinations. For a considerable time the head of the Public Service Commission in India—corresponding to the Civil Service Commission in the United Kingdom—was a distinguished Moslem. On account of ill-health he resigned. It is quite true, as has been stated, that no Moslem candidate was successful in the Defence Academy examinations for the Air Force held in June 1954, and in the United Provinces Civil Service examinations in 1955. I submit that that is only another proof that we do not interfere with these bodies that are placed outside the Administration in the interests of the community, even if that intervention is on the side of the angels. We could not go in and say, if a candidate is not according to the standard, that he is either a Moslem or a Hindu or a Brahmin and, therefore, he must be gunned. The examinations, however, are on a competitive basis under the control of the Public Service Commission concerned, in the case of civil applicants, and under the control of the Union Public Service Commission and the Service Selection Board for entry in the National Defence Academy. A Moslem candidate was selected by the United Provinces Civil Services in 1954.

When we come to the armed forces, the following number of Moslems were commissioned in the armed forces in the last four years—and the number of commissions in each year is very small: in 1953 six; in 1954 eleven; in 1955 three; in 1956 seven. So this does not show discrimination on the grounds of religion. But the most important thing in this matter is this. The results of the National Defence Academy examinations in 1954 have been mentioned and it is pertinent, therefore, to mention that the Commandant of the Academy is Major General Habib Ullah. That is not the name of a high class Brahmin; it is a Moslem name. He is a Major General in the Indian army and he is the head of the Academy, and there are plenty of Moslems holding comparatively high offices in the Indian Air Force, considering that it is a young Air Force—we have Group Captains, Wing Commanders, Squadron Leaders, all occupying high offices. The same applies in the Navy.

Reference was made to communal riots, and I think it is important that we should give the facts in connexion with this. I believe that the facts given by the Foreign Minister of Pakistan are probably correct. Even if they are not accurate, we are prepared to accept them.

There have been communal riots in India. It is to our lasting shame that the passion of our people are inflamed in the name of race and religion. Their guilt of the assassination of the founder of our nation casts its shadow on our history and will do so for a considerable time. We accept this guilt; but the question is whether it is due to the state of our organization and our adminis-

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tration. The fact is that there have been 350 communal riots in India since independence.

What is the position in Pakistan? I am not talking about the whole of Pakistan, but only of Eastern Pakistan, where there is a Hindu minority of a considerable size. In 1950 the Prime Ministers of India and Pakistan signed an agreement for the protection of their respective minorities. They decided to help each other and appealed to people on either side. Since that agreement was signed in 1950, there have been 8,021 cases of communal incidents in which the minority community were the victims, and these have been brought to the notice of the East Pakistan Government. These are proper official papers. As many as 1,762 of these involve offences against women. Members of the minority community have been leaving their hearths and homes and migrating into India after being discriminated against and seriously concerned about their honour and security. The following are the migration figures: in 1955, 239,031 people came from Pakistan into India, leaving their Pakistan homes—and I have the figure here month by month; in 1956, beginning in January, there were 19,206, and up to August, 47,065. I have not the figures for the latter part of the year but, since India became independent, four million members of the minority community have come over from East Pakistan to seek refuge in India; and we have given them asylum.

I propose, since I do not want to take too much time, to circulate information with an account of this exodus, published in the British Press in the *Manchester Guardian*, which finishes by saying: "Pakistan is playing with fire. By comparison, Kashmiri border incidents are not even flickers." We regret this. In India we do not make much of this matter because one way to add to communal fury is to give too much publicity to this information. I regret that this has been drawn out of us. We do not say this with any gusto. We take our share of guilt. We say that our country is still not living up to its standards either of non-violence or of respect of other people, religions, races or communities. But the penalties imposed are severe; the vigilance exercised is considerable, and the propaganda for eliminating the cause of the friction is country-wide.

Those are the facts that were put out and on which I thought I should enlighten the Security Council as to how far they are right or how far they are wrong. It may be asked, why should the Government of India take the time of the Security Council in order to deal with matters that are largely the domestic concern either of Pakistan or of India? The reason is very simple. Because the basis of the Pakistan "claim" is that Kashmir is populated by Moslems and for some reason, which is extra-Charter, extra-constitutional, extra-legal, by some primordial rights, these people really belong to the other side, irrespective of all legal and other arrangements that are made.

We are proud of the fact—a fact which my colleague described—that we are a secular State. We make no difference between different religions. There are 5 million Roman Catholics in India and we have had no difficulties, and I hope that they have not had any. We have not heard of any. And that is the position.

That completes my answer to the statements that have been made. The next part of my intervention in this matter is to deal with the situation we have before us. I said the last time that the so-called Jammu and Kashmir problem which is before the Council had arisen as a result of a complaint which in substance is of aggression or of invasion, because abetting a crime is the same as the crime itself or participating in its commission. You can be an accessory before or after the fact—a fact not known to English law but known to other systems. So that was where it began. Two answers have been given and two thoughts are in the minds of the members of the Security Council.

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One is what Mr. Tsiang referred to the other day, that we decided to by-pass the question of aggression. I have been at some difficulty in trying to deal with this matter because we have no desire to enter into controversies with members of the Council. We are invited here to state our case and I hope that I will not say anything that infringes upon your status as members of this august body. But I do not know what "by-pass" exactly means. By-passing means not traversing that region. That does not mean that the region does not exist. A by-pass is usually a short-cut to your goal. If you cannot get to that goal because some trees are across the road or because the road has fallen away, then you have to go back to where you started and go along the normal road.

Therefore, even taking this by-passing, it does not constitute any kind of non-existence of this fact. I refer the Council to the various statements that have been made in this order: First, there was a set of statements at the beginning of this difficulty. Then Mr. Gopalaswami Ayyangar, Sheikh Abdullah and others made statements before this Council, and each time a proposal was put forward they entered a caveat and said: Our original complaint is this: we do not move away from there; we are prepared to consider other matters.

This process has been repeated in the whole proceedings of the United Nations Commission for India and Pakistan (UNCIP). Again, to save your time, we will circulate for your study the various occasions when UNCIP took this into account, and that is why the sovereignty of the Jammu and Kashmir Government has never been questioned. That is why Pakistan has never been given a place in either the plebiscite organization or anything of that character, or indeed, in the Government of the occupied area, which was supposed to be given to the local authorities. Therefore, although I have the papers here, in view of the time, if you will permit me, I will not read them. We will circulate these. They date from the very day we brought this complaint, and, on each subsequent occasion when Sir Benegal Rau, a member of this Council, spoke on this matter several times, and when, afterwards, it was before General McNaughton. That was one of the main difficulties in dealing with General McNaughton; we thought that the procedure suggested—not adopted, but suggested, and they were only suggestions—by both General McNaughton and Sir Owen Dixon were *ultra vires* of the UNCIP resolutions, because the UNCIP resolutions accepted something as basic. And we will come to that in a moment, because I have to deal with it according to the instructions of my Government.

Then came the period when we were in negotiations, and proposals of various kinds with Sir Owen Dixon and, afterwards, with Mr. Graham. I ask the Council to look at the five reports of Mr. Graham. In each of these, there is mention of this and they are set forth categorically as our position.

We have never resiled from the position that the problem before the Commission is one of invasion. That arises from the fact that Kashmir is an integral part of India and it became a part of India by law, by the right of protection, and by the desires of the people as far as we could ascertain them. The question was asked of me yesterday, by a very good friend, a person for whom I have a very great regard: If this were so—he used some other words which are not very parliamentary—then why in the world did you suggest a plebiscite?

I want to make this very clear; it is a little bit abstruse probably: The accession is complete. But it is possible for any sovereign government to terminate an accession, after accession and the incorporation in law and in fact of such part of the territory as the enemy would permit into the Union of India. And if you will read the original complaint, what does it say? It says that if we are to meet this aggression effectively, we would have to invade Pakis-

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tan. That is an ordinary elementary problem of military science, I am told—I am not a military man—and we said, this is what we do not want to do; we do not want this to develop into an international war between us, which may have other consequences. We warned you to ask them not to give succour and aid, not to assist them, and so on.

Therefore, we came here. With regard to this whole question of a plebiscite, it was not a plebiscite in the beginning; it was what is called a reference to the people, ascertaining their wishes or something of that character; no particular form was given to it. It arose from our own voluntary statements, an engagement between ourselves, our consciences, and the peoples of Kashmir. Its relation to accession is this: any discussions, any resolution, any statement here of our common desire to finally decide this matter by plebiscite is not either in law or in fact or in political argument, in reality or in truth, any admission or any belief founded upon an idea that there is such a thing as temporary accession.

It is possible for any sovereign State to cede territory. If, as a result of a plebiscite, if ever it did come, the people decided that they did not want to stay with India, then our duty at that time would be to adopt those constitutional procedures which would enable us to separate that territory.

That is what is likely to happen in regard to the French possessions in India. By friendly negotiations, these small territories have been transferred *de facto,* their administration. Some day they will be transferred *de jure.* We cannot ignore the constitutional procedures of France. When the time comes, there will be a treaty which cedes in law; it no longer is French territory. And here I am not revealing any secret, because it is part of published news, but neither they nor we are rushing this matter because there is no need to do so. It was all done in a friendly way. Therefore, when we offered a plebiscite, or rather suggested a plebiscite, we had these things in mind. First of all, we want to find ways and means where the spreading of this conflict could be avoided and bloodshed could be done away with. Secondly, we were prepared to accept a test. Now a test does not in any way argue that the union does not exist. But we are prepared to put the union to the test.

A member of Parliament or a Government may be safely in office. He may even have a comfortable majority. He may be challenged in the country on a particular issue. Then he may take it into his head to go to the country and ask for a mandate. There is no obligation for him to do so. The fact that he appeals to the electorate does not mean that his is an illegal goveernment. It simply means that if the mandate goes against that government, it ceases to be a government. Therefore, to argue that because a plebiscite was suggested this is disputed territory— and the word "dispute" occurs in no resolution of the Security Council to which we are parties.

Therefore, what was possible, if there had been a plebiscite, would have been the termination of that state of affairs. The termination of that state of affairs is not to argue that it did not exist. Those are two widely different propositions, and they go to the root of this matter. If that were not so, then the action of Pakistan would not be the invasion of our sovereign territory. Then the Security Council would have to wonder: What was Kashmir? Was it, in the terms of Rajagopalachari, a former Governor-General of India, an elder statesman, a no man's land? It could not be because it was among the 572 States that Her Majesty's Government listed and with whom His Majesty's Government at that time had friendly treaties.

What is more, up to 15 August 1947, the Maharajah of Kashmir, according to the practice from the time of Queen Victoria, presented four Kashmir shawls to the Sovereign of Britain. So it was an integral State and, as you will see in this matter all along, there had been great pains to

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maintain this position. We came here for that reason. This fundamental position has not altered.

It is not as though we were the insurrectionists in 1947. I request the Security Council members to read every assurance, every resolution, even the summaries made by Mr. Graham, where the position of India on this matter has never been given away by the Prime Minister himself, who has been dealing with this matter as Minister of External Affairs. He has definitely saved his position right along and it was not an illegal saving, as you will see when I come to discuss the resolutions.

The second link or charge or rebuttal is: "Yes, you had a complaint of aggression"—this is what Mr. Tsiang told us—"and they had a counter-complaint. One cancels the other." I have a great respect for Mr. Tsiang's mind and his intelligence. This has nothing to do with our recognition or non-recognition of Nationalist China. Personal relations and regards must continue. I have read practically everything he said on this subject. Much of it is extremely cautious.

My Government would not be prepared to accept this statement as an axiom of international law in this matter or any argument put forward by Mr. Noel-Baker, who was my teacher and who I probably know better than anyone else in this room. He himself denies it, because Mr. Noel-Baker starts from one principle or from one objective. He says: "The fighting has to be stopped. Find anything that will stop the fighting." That was his attitude. Secondly, to quote Noel-Baker in this particular way is to quote him as the counsel for the prosecution. Though we are not the defendants in this matter, it would look as if we are. You know, our people find it very difficult to accept that. We came here with a complaint of invasion and all along the Security Council in its proceedings puts us into the position of a defendant. We are not prepared to accept that.

Let me return to Mr. Tsiang because what he said represents not only his view but either the expressed or unexpressed view of many others. I thought I had answered it the last time, but my capacity for expression and for conveying ideas seems to be extremely limited.

There was our complaint of invasion. The answer was: "Yes, you had a complaint of invasion. They had a counter-claim, and that counter-claim washes this out." Now anyone who is accustomed to reading documents and who examines this objectively will find that this argument does not bear examination. What did we complain about? We complained about what was virtually an invasion of Kashmir, whatever words we used. And after conciliation, we invoked Chapter VI.

What was Pakistan's reply? It was a long document of three sections, the greater part of which had nothing to do with Kashmir. It went so far as to charge us with genocide and a lot of other things. They charged us with not having proper economic relations with them, and I suppose that, if the time had been given, perhaps it might have been said, with even their survival. So the so-called counter-claim consists of a very large number of other matters.

Let us assume for argument that these other matters might have some value. Apparently its value, so far as the Security Council is concerned, is to be judged by the fact that the Council decided to put it on the shelf. The Council has not considered it since.

But whatever that may be, with regard to Kashmir the only answer is contained in paragraph 5, which I quoted to the Council before. It is in the documents. What does it say? We alleged invasion and Zafrulla Khan denied it; that is, he has said not that the invasion was right and not that it was not an invasion. They did not say: "We are going to our own territory." They did not say: "We are not going to Indian territory." They did not say: "We have not invaded." The answer was not any of these things, but that they were not there. Therefore, the answer was a denial. If that denial

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had been substantiated by facts—not by facts that we adduced but which the Commission adduced, and therefore the Security Council adduced—then that denial would have had value. But the facts are otherwise. They were found there. We found them. Our generals went to cocktail parties with them—they were part of the same army. We soon found out they were there. General Tariq, who was Akbar Khan of the Army, had taken off his shoulder straps and had become the leader of the commandos. Of course they denied that there was an army.

At any rate, later it was admitted. What is more, at earlier stages of the invasion, starting from 10 October, during the period of Major General Scott's diary and later up to October and November, Pakistan was guilty of invasion of our country. It committed the crime of depredation upon the sovereign territory of India, of a neighbour which was trying very hard to live on good terms with it, a neighbour which, for the price of our common independence, had admitted to the sunderment of our territory. I will come to our relations in the future.

Therefore, the answer to the complaint, I say, with respect to Mr. Tsiang, is not a counter-claim that washes out the matter. It is not a plus and minus. It is a denial. If that denial is disproved by the Security Council, what is the result? The aggression, nothing else. Pakistan's case was not: "We have a right to go there. But we did not go there. It was not your territory we invaded. You committed aggression upon us by coming here." That argument was adduced by the Foreign Minister at this stage in the Council on grounds, that will not, I am sorry to say, stand examination. What does he say? He said that the Government of India, not only by accepting accession but by sending troops to Kashmir—about which I read General Lockhart and Air Marshal Elmhurst's story—committed aggression on Pakistan territory. Why? Because the Maharajah of Kashmir had made a standstill agreement with them and the standstill agreement, according to them, is a kind of semi-accession which gave them sovereignty. But unfortunately for Pakistan, Sir Zaffrullah Khan, speaking before this Security Council, said that this standstill agreement was in regard to communications and post offices and what not, and he did not say that it included the rights of defence and external affairs.

But assuming it did, it was the Maharajah who concluded the standstill agreement, the Maharajah offered the same standstill agreement to two countries. What is more, what the Maharajah can give he can take away in those circumstances—not the conditions of accession. And Pakistan, having violated that standstill agreement, and the Maharajah having asked another country to come to his defence against Pakistan-aided marauders in his country—the standstill agreement was dead. First, even if there was a standstill agreement, that would give no right to sovereignty; accession is a superior document, it is a major right; it is a higher level of right which kills the lower one. Secondly, the standstill agreement has been violated by the actions of Mr. Jinnah's administration—then Governor-General—but he was the supreme authority in Pakistan at that time where these people were being sort of starved into submission by denying them salt, oil and food, and what is more by the 73,000 tribal raiders being collected with the invitation to loot the territory.

For all those reasons the standstill agreement which was supposed to be a panacea to prevent the bleeding, to prevent the breaking of communications—that has gone to pieces. Therefore, I submit what remains is aggression. The action of Pakistan as Sir Owen Dixon has said, and you may say "why do you quote Sir Owen Dixon when he is for you and why don't you quote him when he is against you?" I gave you the reasons.

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The only time that we have not been able to agree with Sir Owen Dixon, and it is not that the disagreements are not as bad as it has been pointed out, is when Sir Owen Dixon departs from his mandate from the Security Council and tries to create a new situation. We have suffered enough by exploratory discussions *pro tem* —not considering positions—but to be told afterwards that we committed ourselves to it. Then, Sir Owen Dixon tried to put into Kashmir an administration which as you will see in a moment, in the 13 August Resolution was the only authority. What is more, the Commission said nobody had the right to change the *status juris* or any other status in regard to this matter. It is only then that we disagreed with Sir Owen Dixon. What is more, Sir Owen Dixon was trying to find other methods of compartmental plebiscites—of partitions—of various other ways of settling this matter. But where Sir Owen Dixon's opinion is of value is when he speaks as a jurist. He is now the Chief Justice of Australia—and they do not make chief justices of people who do not understand either municipal or international law; and that is not a presumption —in this case he is well known. What did he say? He said that Pakistan—I quoted the paragraph to you before, so I will summarize it—when it entered the Kashmir territory it committed an offence against international law—that is to say, there was a breach of our sovereignty—and that is aggression. And therefore we want that at no time, whatever happens to us, we cannot in obedience to the Charter, out of respect for you gentlemen who represent the authority of the United Nations—not in your persons, not even in your countries—but by the mandate that rests on you—we shall not at any time surrender the right to defend, the moral right, the legal right, the political right and the military right of a country to defend its own sovereignty.

Kashmir is an integral part of India. It could cease to be so only by an act of volition by the Government of India. Therefore, when we came here that was the position. And in a desire to find settlements we were prepared to consider various propositions. But at no time was the sovereignty of the Jammu and Kashmir Government ever abandoned or permitted to be abandoned, or any phraseology used in any of these documents that permitted it. And if the Council, as it is likely to be, is overwhelmed with a large volume of this material, it will be interesting if the Secretariat could through its research find any document of the Security Council, of any authority of the United Nations, which does not reaffirm this position. We have taken pains to see that that is not departed from. That was the position even in the last meetings with Mr. Graham. We came here, and what did we agree to? We agreed to what is common ground between Pakistan and ourselves. We agreed, on the one hand, to what is our position in this matter, namely, that we believe every proposition is subject to negotiation however difficult; every proposition is subject to conciliation methods, even if the rights of one party are beyond question. Therefore, we were prepared to discuss these matters. And I request those gentlemen who say we by-passed this, and I can understand the legitimate feelings of satisfaction in the minds of the Security Council members when they said that here is a disputed question when the two parties are agreeing on a method. But let us read the phraseology of it. What is the phraseology? The Security Council records that both parties have expressed a desire to settle this matter in this way; but that does not mean that there has been no invasion, that does not mean there is no sovereignty, that does not mean there was no accession. I might be the owner of a house, but it may be that for many reasons I may prefer to give it up if certain conditions happen.

So we came here and the proceedings started. Now, at this stage we would like to make it quite clear that it is not the contention of the Government of India that the Security Council could be a sort of Rip

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Van Winkle and forget the nine years that have passed. It cannot forget it in terms of its own resolutions; nor can it forget it in terms of other events. So we are not saying, "forget all this and go back to what it was". That is not our position. Our position is that it remains exactly what it was; that the issue before this Council is the question of aggression and acting up to the principles of the Charter in order to liquidate the aggression. When that is liquidated one method or another may be tried. Therefore, the invasion and its consequences, its consequences to the peoples of Kashmir—and in our humble submission, more particularly to the peoples of Kashmir in these unfortunate areas that are occupied by a Government that has no free elections, where economic conditions are such that the people are in a very bad way—are exemplified by the statement of the leaders of this Azad movement in their Memorandum to the Constituent Assembly that they cannot appoint even a peon, meaning a commissionnaire or a porter of some kind. They have no such powers at all. It concerns them, it concerns us, it concerns what is called the sub-continent. I believe it concerns the whole area that lies in the lap of the Indian Ocean; and it may concern the world. That is why this Kashmir question is so important. That is why we are prepared to go on trying, to go on and on trying, and we have kept on trying.

Sir Firoz Khan Noon reminded me that I could not just rub out all that has happened since the last meeting of the Security Council in 1952 and now. I have made no such attempt. Therefore, it comes to this question: the gravamen of the charge particularly if you read the press of the United Kingdom, is that my country which is in the closest fraternal relations with them, which has a great regard for their traditions and their powers even when they were ruling us, that we are about to or have committed an act of international brigandage; that we are about to commit or have committed violations of our international obligations. And I say most solemnly not only on behalf of my delegation in this meeting, but on behalf of my Government and my people that we have no intention and we shall at no time violate an international obligation. If we do, we deserve to stand convicted. But the Security Council has an equal responsibility to see that there are international obligations and to examine their content. Therefore, let me take the first step. The issue is plebiscite—that is what we are talking about—that is before the Security Council. That is not the real issue, because we are now talking in a vacuum.

As the Commission said, situations change but resolutions remain unchanged. If I had said that, members of the Security Council would tell me privately that I was being aggressive. I am temperamentally not aggressive as everybody knows. It is the Commission that said: "Situations change; resolutions do not change."

Now let us take this question of the plebiscite. I submit that the origin and the family tree of this plebiscite arises from our desire that we do not take this territory of Kashmir, originally ruled by a rather wrong kind of Maharajah, with whom we joined issue, where there was a considerable popular movement, where our national leaders were threatened, and we wanted to settle that. Then Mountbatten wrote to the Maharajah. This was not part of the instrument of accession, as I told you last time. The instrument of accession was complete by the offer and the acceptance. It was a letter that went separately. Therefore, it was a personal wish.

That is one aspect of the plebiscite question, but the Foreign Minister of Pakistan, has referred, as he is entitled to do, to various other statements made by my Prime Minister to his then Prime Minister in regard to various solutions of the problem.

Here I want to submit certain propositions of international behaviour, which apply equally to municipal behaviour. If an offer is made and it is rejected, that offer is no

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longer alive. If an offer is made and it is accepted, it becomes an engagement. It would be impossible to function in any other way, since there would be so many commitments floating about in the air.

It is quite true that Mountbatten did ask Mr. Jinnah, the Governor-General, "Why not arrange this by a plebiscite and do it through the United Nations, and this, that and the other?" His answer was not an acceptance but a counter-offer: "Let us two govern this country. Let us suppress the raiders"; and this, that and the other. We rejected that. So that phase of it was over. There were so many other phases of it. The Foreign Minister read out the text of a document, which was authentic as far as it went, but it looks different if you read the whole text. It was a telegram from Pandit Jawaharlal Nehru to Liaquat Ali Khan, the Prime Minister of Pakistan, in which he said: "This is an offer we make to the people of Kashmir, to Pakistan and the world." We do not deny this. But we did not accept it at that time. What is more, not only did we not accept it by words; we did not accept it by conduct, because the other side of the offer was that there should be a withdrawal of the aggression, that there should be a stopping of force and violence and hatred and things of that kind.

So we come to the date of 22 December, 1947. I would refer to the letter of 22 December 1947 from my Prime Minister to the then Prime Minister of Pakistan. I shall give you the number of the document in a minute. I do not propose to read the whole of it but I beg the members of the Security Council to read the whole of it because it was written by my Prime Minister from the anguish of his heart when all the suffering was going on in our country, with the knowledge that only a few days previously this man had been his own Finance Minister, and in a country that only a few days previously had been part of our common homeland. All the paragraphs hang together, but I do not wish to shelter myself under that. However, on 22 December we terminated this position.

It is common knowledge that even a treaty can be denounced; much more so an engagement; and even more so an offer. So on 22 December my Prime Minister said this:

> Since protests have failed to bear fruit, the Government of Inida now formally ask the Government of Pakistan to deny to the raiders .....(Krishna Menon: Then are set out, under numbers 1, 2 and 3, "access", "military supplies" and other kinds of assistance.) The Government of India have always desired and still earnestly desire to live on terms of friendship with Pakistan. (Krishna Menon: That is the only subsisting engagement that, in spite of everything that happens, will subsist in our hearts.) It is their sincere hope that the request that we have now formally made will be acceded to promptly.....(Krishna Menon: Therefore, this is in the nature not of an ultimatum but of a termination of the previous relationship. That is what happens between countries. They say, "If you do not do this, we will do something else.") Failing such a response, they will be compelled to take such action, consistent with the provisions of the United Nations Charter as they may consider necessary to protect their interests and to discharge their obligations to the Government and the people of Kashmir.

I submit that this letter would entitle the Government of India, in accordance with international law and practice and the observance of the Charter, to take any step, including the invasion of Pakistan, for the defence of that territory.

Therefore, on 22 December we concluded that that chapter was ended, the chapter dealing with what Mountbatten said and what Campbell Johnson said and what someone else said and what Mr. Jinnah said: "We will call them off", or whatever it was. All that was over. We came to a new chapter, and that chapter is the complaint before the Security Council.

I have dealt with the complaint as best I can, and I have said that the only answer has been a denial. That denial has been subsequently disproved, and therefore the complaint exists. It arises from this, that any engagements by which the Government of India is bound are only the engagements to which it is a party since that per-

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iod apart from the general obligations under international law. I want to repeat that. Apart from the general obligations under the Charter, the only specific engagements are the engagements arising from the reference to the Security Council, and I ask you to bear with me on an examination of this.

A number of resolutions have been passed by the Security Council, and none of these is a resolution of a character which may be called "international engagements" except the two to which my distinguished colleague has referred. The remainder are by way of adjuration and, to the extent that they are under Chapter VI, they are binding upon the people concerned, because the reference was under Chapter VI. Otherwise they are by way of recommendation. I propose—again for the purpose of trying to conclude this this afternoon—to circulate our note on this matter.

What is obligatory nature of actions taken under Chapter VI of the Charter? This goes back to San Francisco. In San Francisco this matter was discussed at great length, and the United States took a very prominent part. The Belgian delegation at that time wanted to place this matter beyond doubt and therefore moved amendments to these provisions. The Conference, however, agreed that an important stage had been reached at Article 37. This Article states that the Security Council may take up disputes where the parties have failed to reach a settlement by the other means indicated. It goes on to state:

> If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

The Council may recommend terms of settlement, but it does not have the power to compel the parties to accept the terms. It has the power to enforce its decisions only after it is determined under the provisions of Chapter VII that a threat to the peace exists.

I would not have brought this up but for the fact that my distinguished colleague, not only in this forum but before his countrymen and mine, has said that we were defying the decisions of the Security Council. The only decisions the Security Council can make are the decisions under Chapter VII.

If you will refer to the report to the President of the United States on the result of the San Francisco Conference from the Chairman of the United States delegation, the Secretary of State at that time—I think it was Mr. Stettinius—on 26 June 1945—they are United States documents and I have not the key number of the document, but it is on pages 85 and 86—you will find that there the legal position is clearly set out as regards the nature of the recommendations and the position of the Security Council in terms of the Charter.

Therefore, recommendations are of that character. And if it is said that the Council has passed this resolution and that it has that moral force, the Government of India will go out of its way to pay every attention to it. But when, as in the case of the resolution of 21 April 1948, it is not possible for us to accept it, the position is rather different.

We therefore come to the international engagement—with the observation that my Government stands by every international commitment it has made. There is no Member of the United Nations to which we yield in our desire to carry out the spirit and the letter of the Charter. But we are not to be placed in the position where the attempts that we make for exploration, or to find ways and means, without arguing every question at every time—even on this occasion, some people have wondered why my Government has instructed me that the whole of the case should be put at the first session, as far as possible—and I crave the indulgence of everyone for repeating this, because, when we have not, we have suffered in the bargain.

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R. A

Therefore, the only international engagements that exist are two resolutions—the UNCIP resolutions of 13 August 1948 and 5 January 1949. My delegation has arranged for copies of these, which are official documents, to be before you for ready reference, since these are the key documents. Since the honour of my country is challenged, the position of India in relation to the Charter has to be examined. What is more, I say with all the seriousness and the gravity of which I am capable that, when Member Governments give consideration to this, these matters have to be taken into account. These are the engagements. If they were of a formal character, they might be treaties but, at any rate, they are the engagements we have entered into—the resolutions of 13 August 1948 and 5 January 1949.

The resolution of 5 January 1949 is of a supplementary and subsidiary character. The representative of Pakistan has asked why I call it "subsidiary". I looked up the Oxford Dictionary, and I find that "supplementary" and "subsidiary" mean much the same thing. "Subsidiary" means "serving to assist" or being "auxiliary". "Supplementary" means "added to supply deficiencies, especially a fuller treatment of a special subject".

The document of 5 January 1949 has no independent existence; it has to be fitted into the framework of the first document.

I have been asked by my Government to invite the Security Council to examine these documents, because it is on the basis of these that the Council, when the time comes, will have to see how this question stands, what the obligations are, what further steps can be taken or not taken, and what will be the consequences. I therefore crave the indulgence of the Council and ask representatives to refer to these documents, which we have placed before them for purposes of reference. These resolutions, particularly the resolution of 13 August 1948, are the result of laborious negotiations. Every word is a matter of give and take and has taken perhaps a whole conference.

We accepted this resolution of 13 August 1948; Pakistan rejected it, in the first instance. The same applies to the resolution of 5 January 1949, which was put to us somewhere about 23 December. In any case, we accepted it on 23 December; Pakistan accepted it on 25 December. Our acceptance was prior. With regard to the resolution of 13 August 1948, the Government of Pakistan made so many conditions in regard to its acceptance that the Commission said that those conditions really altered the character of the whole thing.

I invite the Council to examine the official document as it appears in the Official Records of the Security Council, Special Supplement No. 7, beginning on page 21. This is in the Third Interim Report of the United Nations Commission for India and Pakistan. At the risk of taxing the patience of the Council, it is my duty, which my Government has instructed me to perform, to deal with every word of this in so far as pertinent. The first sentence reads:

> The United Nations Commission for India and Pakistan,
>
> Having given careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir....

I invite attention to the words "regarding the situation". It does not speak of a "dispute" here, but of a "situation"—this is what we accepted—"regarding the situation" caused by the invasion by Pakistan. Invasion of what? Not of no-man's land, not of a divided territory—but of the State of Jammu and Kashmir—which is an assertion of the whole of its entity.

These are the key words in the first paragraph. First of all, we are dealing with a "situation", as my predecessor submitted to this Council. We are engaged in no territorial dispute; we are making a complaint of a "situation" in the State of Jammu and Kashmir. Therefore, there are not two States, there are not two authorities—and, as you will see later on, this Government is sovereign.

पं० इन्द्र विद्या वाचस्पति प्रदत्त संग्रह

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The next paragraph reads: "Being of the opinion that the prompt cessation of hostilities..". Those words are a key to the state of mind of the Security Council and the parties at that time—"the prompt cessation of hostilities"— because this was brought here in order to prevent the fire from spreading. And, from our point of view, it was telling the Security Council that we would be forced into this position, which we did not want to take.

The next point reads: "and the correction of conditions the continuance of which is likely to endanger international peace and security". That is the remedy sought. Those conditions are the invasion by the other side.

It then goes on: "....to assist the Governments of India and Pakistan..". There is no reference here to any other authority —to Azad Kashmir or anybody else. It speaks of assisting the "Governments of India and Pakistan", who are the two combatant high commands. Here it is not a question of two States. It would be two people engaged in a conflict, as we will see later, when the agreement is signed—the two high commands. "....to assist the Governments of India and Pakistan in effecting a final settlement of the situation". That is the second paragraph.

There is nothing in the next paragraph, because it simply says that the proposal will be submitted simultaneously to the Governments of India and Pakistan. Although it was submitted simultaneously, it was accepted by us and rejected by them. That is the preamble.

The pattern of the body of the resolution is that it is in three parts, and each part has sub-parts. The part consists of five sections—A, B, C, D, and E. I invite the Council's attention to them. Part I is headed "Cease—fire order", and section A reads: "The Governments of India and Pakistan....". There is no recognition here of the Azad Government, insurgent forces or anything else.

When the Commission went to Karachi, Sir Zafrullah Khan, who was then Foreign Minister, informed the Commission that the Pakistan army was there. We all knew it—but only then was it admitted. Section A reads:

> The Government of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon.....

> There is nothing controversial in that, except with reference to India and Pakistan.

Then we come to Section B, a very important section on which the present situation so much turns and we submit with a great degree of sadness that the Security Council has not hitherto given it sufficient attention. Our Prime Minister has expressed this fully in many places and we must say it again. Section B reads as follows:

> The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

It is our submission today that not only has Pakistan not carried out Part II of the agreement but it has also violated the cease-fire agreement, and we propose to prove this. Section B continues:

> For the purpose of these proposals 'forces under their control' shall be considered (Krishna Menon: and the next phrase is very important) to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides.

Now this is the kind of definition that you will find is consonant, for example, with the description in the Geneva Convention on Civil War. Here it is: There is an undertaking by the two High Commands that they will refrain from taking any measures that might augment the military potential; and we contend that ever since the conclusion of these two agreements Pakistan has consistently, repeatedly, continuously and without interruptions violated Section B of the cease-fire order. I thought this would be the best place for me to elaborate, but my advisers tell me that it is better for me

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to deal with the resolution first and to come back to this argument afterwards. Section C reads:

The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

Section D reads:

In its discretion and as the Commission may find practicable the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.

Nothing turns on this paragraph. Military observers have been appointed and they constantly report; and as I mentioned the other day, if there was any concentration of Indian troops and military observers I would have reported to the Secretary-General.

Now we come to a key paragraph in Part I, that is, Section E:

The Government of India and the Government of Pakistan agree to appeal to their respective people....

The first was a negative action of desisting from doing something, but here we have agreed to appeal to our respective people "to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations". As this argument develops you will find a statement by the Government of India that the one condition that is necessary for the settlement of this problem or even for negotiation, is an improved atmosphere. It is impossible to negotiate effectively, to come to an agreement in the context of a campaign of war propaganda that goes on against us and a programme of religious hatred. We will at no time agree to our State being founded on a religious foundation. We want our people to be religious, to have freedom of religion and freedom of worship, but this is a matter between them and their conscience, or the Supreme Being, or whatever you call it. We are not prepared to consider secular matters on any other basis.

Section E states:

The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

It is our submission that from that day—and I will read some of the propaganda—since the Security Council passed the resolution, it is for the Security Council to consider what relation the stepping-up of the propaganda has to the resolution passed; it is not for me to say, because I am invited here under Article 32 to state my case. We say that Section E stands violated. So far as the cease-fire order is concerned, Sections B and E of Part I stand violated. I will tell the Security Council what the effect of that violation is on the so-called international engagement.

Now we come to Part II. This is a Truce Agreement, and the first paragraph reads as follows:

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles (Krishna Menon: They do not accept only the provisions) as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

Let us look at Section A of the Truce Agreement. The first part of Section A is a key paragraph to which so little attention has been paid in the years that have passed:

As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

What is the significance of this? First of all, as I said, there is something you cannot deny. But Pakistan denies that there are troops there and, even taking that date in May—which we do not accept in fact—it was six months afterwards when the Security Council found out—when they

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went to Karachi and not before—that the troops of Pakistan had entered.

Therefore, two things emerge: first, that a material change has taken place in the situation since we came here, because the Security Council was informed to the contrary. I submit, without desiring to use any strong words, that this was the first instance, the basic instance, in which the Security Council was kept in the dark and the facts were concealed from it. They were first concealed from us, which is the reason for all the emotional letters from the heart written by my Prime Minister to the other Prime Minister, and we came to know about it. Now a material change is the introduction of the Pakistan army, the introduction of the army to a country which it had previously said it had not entered and which at a later stage it had said: "We cannot stop them; they are co-religionists and it would lead to trouble;" it said: "We are not giving them petrol", and so on.

Now the Commission says this constitutes a material change. This is a key factor in the whole situation and unless it is taken into account this problem cannot be understood. What has the Pakistan Government to do? "....the Government of Pakistan agrees to withdraw its troops from that State". I would like you to listen to those words. In the first paragraph of Section A of Part II what is agreed to is an unconditional withdrawal by Pakistan of its army from the State of Jammu and Kashmir. So all this palaver afterwards about synchronizations and about balanced forces and so on, is not what is intended by this clause. The duty of withdrawal was unconditional and therefore no part of this agreement can even be considered until Pakistan has vacated the aggression. And if I may submit—and we as a Member State are entitled to submit under the terms of the Charter—the duty of the Security Council in terms of the Charter is the vacation of this aggression. It is laid down that "Pakistan agrees to withdraw its troops from that State".

Now let us look at paragraph 2 of Section A, which reads:

The Government of Pakistan (Krishna Menon: That is the first step, there will be more) will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir (Krishna Menon: not only from the area on its side of the cease-fire line, but the whole of Jammu and Kashmir) of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

That paragraph 2 has not been carried out and it continues not to be carried out and that action is one of the subsisting problems of the situation as you will see when we go into detail in this. Paragraph 3 reads:

Pending a final solution, the territory evacuated (Krishna Menon: this is again a very important part) by the Pakistan troops (Krishna Menon: that is to say, the territory that they are now occupying, as I told you when I spoke about the Constituent Assembly and as I shall point out later on, that territory was supposed to be evacuated by them altogether. They had to go away, they were invaders, they have no right there. The only people who could stay were the local authorities.)....the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

Paragraph 3 therefore makes it clear beyond all doubt that the State of Pakistan had no business whatsoever in the territory of Jammu and Kashmir and that the duty which they failed to discharge was to remove themselves fully and completely. It is no answer for the Foreign Minister of Pakistan to turn round and ask me, "What does Mr. Krishna Menon want, to be handed Kashmir on a silver platter?"

We come now to Section B, paragraph 1, which reads as follows:

When.....(Krishna Menon: And the word "when" in English means just what it says)..... the Commission shall have notified .....(Krishna Menon: that is to say, the following action must be after the notification).....the Government of India...(Krishna Menon: not the Government of Pakistan, because the Government of India is the sovereign authority in this matter)...that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn...

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I invite the attention of the Council to the word "when"—nothing can happen until this event takes place. The Commission have to notify about what? That the tribesmen have withdrawn from the present occupied territory, that they have completely evacuated. The paragraph reads: "When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn, thereby terminating the situation..."—the situation which was being complained of—"... which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir...". That is to say, the Commission has to report that they have withdrawn, thereby terminating the situation which made the presence of our troops in Kashmir necessary. Until that situation is terminated, nothing can happen. "... and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission."

Some of the things which the Council has heard are in violation of this clause. When the Commission notifies us that the tribesmen and Pakistan nationals have been withdrawn and the situation for which we have gone there has been terminated and the presence of Indian troops therefore has no *raison d'etre*, then we are to begin to withdraw the bulk of our forces, and the stages of that have to be agreed upon with the Commission. It has nothing to do with Pakistan; it is with the Commission. The Commission tried to suggest, as I shall point out later, that we should tell Pakistan of our troop movements, which we declined to do. We stated that we would tell the Commission in confidence, but that we were not prepared to tell Pakistan about Indian troop movements. Pakistan insisted that they should be told, and that is one of the reasons why the negotiations broke down.

Section B, paragraph 2 reads as follows:

Pending the acceptance of the conditions for a final settlement of the situation..(Krishna Menon: And I again invite the attention of the Council to the word "situation")..in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire those forces of its army which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

Here we have one of the most difficult clauses in the sense that its meaning has not been fully appreciated by the Security Council in later considerations. Now what does this paragraph state? "Pending the acceptance of the conditions ..." —while the situation remains, the forces of the Indian army, with the agreement of the Commission, will be maintained as necessary to assist the local authorities. Now the key words are "local authorities". "Local authorities" is a phrase which is applied only to administration in the Pakistan occupied area; in the other parts it is the Government of Jammu and Kashmir. According to this, therefore, the Indian army is to assist, in the maintenance of law and order, the local authorities on what is the so-called Azad side. Therefore, at this stage there was no question of anything but evacuating the aggression.

This will become clear if the Security Council will read the document dated 20 August, which is a letter from the Prime Minister to the Commission about the Commission's assurances. I should like to ask whether the Security Council would say that assurances given on behalf of the Commission to the Head of a Government, assurances which are public knowledge and which are published, do not have the same value as all the engagements. Not that those engagements are necessary, because this text stands on its own. But those engagements are very definite.

Therefore, paragraph 2 gives the Government of India the right and the duty to

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assist in the maintenance of law and order. When the Chairman was asked what was meant by law and order and what about the external defence of the State of Jammu and Kashmir, he stated that the two could not be separated. The position, therefore, was the one which Mr. Gopalaswami Ayyangar put to this Council: the Pakistan forces withdraw and the Indian army occupy the external frontiers of Kashmir.

When we raise these questions people think that we are splitting hairs. Might I digress for a moment to state that if this case was being argued before a legal tribunal it would probably take three or four weeks' time. However, the Members of the Council are so busy that we have to go through this quickly.

The term "local authorities" is used throughout the whole of these documents only as applied to the authorities that are not *de jure,* the insurgents who have set up their own councils. Paragraph 2 places upon the Government of India both the duty and the right to look after law and order in the occupied area. In the light of that clause, I ask whether the whole stand of the Pakistan Government is justified. Not at all.

Section B, paragraph 3, reads as follows:

> The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

This we have done, and we did it not only at that time—it is in that spirit that the Constitution came into being. Before that time there was no Constitution and there was no popular Government. What is more, very soon afterwards the dynasty was displaced and the son of the older Maharajah, who was an autocratic ruler, became elected Head of State. We proceeded in pursuance of part II, section B.

We come now to section C, which has filled many minds but which is not necessarily the key part of the picture. Section C, paragraph 1, reads as follows:

> Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon...will be made public.

But I am sorry to say that this opportunity has not arisen because no truce agreement has been signed. Part I has been violated in two main sections. The cease-fire agreement has been violated and Part II has not been implemented. Every necessary condition has been breached. This takes us now to part III, which refers to the plebiscite, and which reads as follows: "The Government of India and the Government of Pakistan reaffirm their wish....."—it does not say "their pledge"—"....that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end...". First, as I have said, it is an affirmation of our common wish. Secondly, it states that it should be determined in accordance with the will of the people. However, this wish concerning the future status of the State of Jammu and Kashmir in part III is not concerned with the present status. The present status is a status under accession. This concerns only the future status. A distinction must be made between regarding an accession as *pro tem* and an accession to be terminated on the happening of another event. Those are two different matters, both in law and in fact and in all the political implications of this question.
Therefore,

> the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end...

Then follows that very nice English expression "upon acceptance"; "upon acceptance" means after acceptance; it not only denotes a sequence, but a sequence of a particular character—

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upon acceptance of the truce agreement...

Then what do they do? After it is accepted

both Governments agree to enter into consultation...

They do not say, "Both Governments go and take a plebiscite", but both Governments agree to enter into consultations with the Commission"—and for what purpose?

to determine their inequitable conditions whereby such free expression will be assured.

When I develop this point the Council will, I hope, be convinced not only that there have never been these fair conditions but that under conditions of psychological warfare and the threats uttered even in this Council, and the massing of personnel on the other side and all the conditions which I shall refer to, these fair and equitable conditions cannot be assured. There can be no question of an election—certainly not under our constitution. And when I say "our constitution" I want to make this further observation, because you gentlemen here, representing other States, can have only a friendly interest in our constitution. It is only we who owe allegiance to it. My friends from the United Kingdom and Australia may have more than a friendly interest in it, because it has family resemblances, and we have a debt of gratitude and a sense of heritage in that respect. But these particular provisions reflect the canons of international behaviour. They are not just municipal law. They are municipal law which corresponds to international conduct.

That is part III, and I will read it when I deal with it in detail. It is part III, therefore, that refers to a plebiscite, and that plebiscite is to be considered. The two Governments are to confer about fair and equitable conditions after part II and part I have been implemented—after the signature of the truce agreements.

Now what is the present position? Part II is violated. This is not an old violation; it stands continually violated. The present position is one of violation. Therefore the Pakistan Government is, in this respect, in sin. It was original sin, but it is continuous so far as part I is concerned, and part II has not taken place. And the Council heard what Sir Owen Dixon said—that, apart from all other considerations, the agreement of the Commission was that none of these things could take place without the agreement of the Government of India.

Before I go on to the resolution of 5 January 1949, I want to repeat what I said a while ago. It is not as though the Government of India is now trying to read meaning into these words. It is not what the lawyer called "the construction of a document"—some old lady writes a will; there is a contest about it; clever lawyers try to read as much as they can into it. That is not the position. This document has taken a great deal of brain work. It has meant so much coming and going; so much saying "yes" and "no"; so much break-down, and so on and so forth. Each of these words has been put in there. Not only have they to be read in their obvious and legal meaning—that is to say, there is a construction of all documents according to law—but they have to be read against the background of all the circumstances. The Security Council, in spite of the fact that its members are heavily engaged, cannot ignore the background conditions which are recorded in so many volumes. These are far too serious matters for it to be said, "There was talk of a plebiscite; well, if we have not a plebiscite, then this, that and the other". Therefore, the whole of this thing has to be read.

That brings me to 5 January. Pakistan refused to accept the resolution of 13 August 1948. At that time the position which was stated by Sir Zafrullah Khan so many times was that this was the purpose of a cease-fire, and that the dominating thought in the minds of the Commission was that there

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should be no cease-fire until there were political settlements. He was holding it up in order to obtain other conditions. Then I believe, between 13 August and October, the Indian army began to move forward. The Pakistan army suffered severe reverses. I am asked to quote to you what the Prime Minister said in Allahabad:

> We stopped a victorious army. We could have settled conclusions. We were stronger at that time, and, God forbid, if our country were invaded we should still render a good account of ourselves. In obedience to the Charter we restrained the action of our military forces. Instead of obtaining what we could have obtained by the use of force we continued to negotiate, having accepted it.

The Commission came here, it returned to Paris, it had further talks with the Pakistan Government—and the military situation had probably some effect on the matter, as a matter of opinion—and on 11 December it elaborated further proposals, partly to meet the Pakistan position that there must be some talk about what was likely to happen after the truce, what was the nature of things, and so on and so forth. Therefore, the Commission spent its time in working out a plan which could be useful if we ever came to part III.

The resolution of 5 January, which covers so many pages, has, from India's point of view, an adverse psychological effect upon those who read it. There are pages and pages about a plebiscite, but none of it is worth and paper it is written on unless part I and part II are agreed upon and, in the case of part III, we confer and agree on fair terms.

Therefore the whole of the resolution of 5 January, which I shall refer to the Council in a moment, cannot be read, either as to its individual paragraphs or as to its entirety, except in this context. And it is common ground that these two resolutions stand together, because it says "supplementary". It is supplementary and subsidiary, because it adds to the other. It enables the other to function if the occasion came. What does it say? It says:

> The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

That is paragraph 1. Paragraph 2 says:

"A plebiscite will be held when it shall be found by the Commission"—and I ask all of you who are scholars of English to tell me what this means. "When it shall be found by the Commission", in plain English, is a condition precedent. If it is not found by the Commission, then, no plebiscite.

> A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in parts I and II of the Commission's resolution of 13 August 1948 have been carried out and arrangements for the plebiscite have been completed.

We can leave the second part because arrangements for the plebiscite did not follow. So it is only if I and II are completed, and I invite the Council's attention to the number of times mention is made, in paragraph after paragraph, of this question of the condition precedent, of the sequence, of something happening after something else. And then again it is an investigation; it is the applying of minds to a plan in order to find fair means of doing this.

That is paragraph 2. As I said, neither part I nor part II has been completed. Then we come to paragraph 3(a), which says:

> The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed (Krishna Menon: And this again is a very important sentence) to office by the Government of Jammu and Kashmir.

Why? Because the Government of Jammu and Kashmir is a sovereign Government. It alone has authority over the territory. And this is what Sir Owen Dixon—as he was entitled to do in his mediatory function, although he was *ultra vires* of this agreement—tried to shift: "he will be formally appointed to office by the Government of Jammu and Kashmir."

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It was to this sentence in the resolution—namely, that the Plebiscite Administrator "will be formally appointed to office by the Government of Jammu and Kashmir"—that Mr. Menzies later referred; he did not see any reason at all why the Government should be displaced.

Paragraph 3 (b) of the resolution states:

The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

Nothing can be nearer to the classical definition of sovereignty than this phrase "shall derive from the State of Jammu and Kashmir the powers...". Under the general, classical definition, the sovereign is the person from whom all powers flow. I do not say that there can be no modifications of that definition, but I do say that it is the classical definition.

Paragraph 3 (c) reads:

The Plebiscite Administrator shall have authority to appoint such staff of assistants and observes as he may require.

This is an administrative provision.

Paragraph 4(a) states:

After implementation of parts I and II of the Commission's resolution of 13 August 1948.—

and here again, we find the words "after implementation"; it is not I who am repeating these phrases; it is the resolution itself which, time and again, uses such words as "when it shall be found", and so forth—

and when the Commission is satisfied that peaceful conditions have been restored in the State the Commission and the Plebiscite Administrator will determine, in consultation—

With whom?

with the Government of India the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite

In this connexion, I should like to make one observation on the use of this word "disposal". As members of the Council know, the document in question was not drafted by English-speaking persons, and the word "disposal" has been used—whether with regard to the Government of India forces or with regard to the *Azad* Kashmir irregulars—in the sense of disposition, not in the sense of throwing away.

Paragraph 4 (a) of the resolution, therefore, also contains the kind of phrase to which I have been referring—namely, "when ....peaceful conditions have been restored in the State." Now, these peaceful conditions have not been restored, because part of the country is under occupation. There is neither law nor order nor assembly nor constitution in that part of the country. Furthermore, the phrase in paragraph 4(a) of the resolution to the effect that the Plebiscite Administrator will determine "in consultation with the Government of India" the final disposal of Indian and State armed forces again establishes the fact that Pakistan has no part whatsoever with regard to these matters. Pakistan will be the beneficiary if the plebiscite goes a certain way. Under the decisions made by the Plebiscite Administrator, Pakistan will be concerned in such arrangements as watching, witnessing, supervising, and so forth—but we have not come to that stage.

The resolution then goes on to set down some administrative provisions, which I shall not deal with in detail.

The next important paragraph in the resolution is paragraph 7; in fact, from our point of view it has very great importance. I am sure that everyone who is concerned with freedom of elections will wish to pay attention to this paragraph. It reads:

All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator, that:

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste, or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of press, speech and assembly

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and freedom of travel in the State, including freedom of lawful entry and exit.....

The importance of paragraph 7(b) is that it contains the assurance that there shall be no religious propaganda; that is to say, there shall be no incidents similar to the one in the Northwest Frontier Province, where a mullah sat down, showed the Koran, and said, "Every vote that you cast against Pakistan is a vote against the Koran". Of course, in a sense that was true, because Pakistan is an Islamic State, and its Constitution is based upon the Koran. But that does not mean that the paragraph of the resolution which I have just quoted does not preclude religious propaganda in Kashmir.

Perhaps this would be a good time to deal with this matter of religion influencing elections. I invite representatives' influencing to the "Manual of Election Laws of India", which they may find in the Library of the United Nations. This is not a manual which we have devised for the purpose of dealing with Kashmir. Although it is a municipal document, it conforms to the general practices and standards of elections throughout the world. In this Manual, we read that the following actions are prohibited in connexion with any elections in India:

...undue influence—that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person, wit hthe connivance of the candidate or his agent, with the free exercise of any electoral right.....

It is also stated that there shall be no inducement of, or attempt to induce, an elector to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or spiritual censure. It is also stated that there shall be no:

systematic appeal to vote or refrain from voting on the grounds of caste, race, community or religion or appeals to religious and national symbols such as the national flag or the national emblem, for the furtherance of the prospects of a candidate's election.

I freely admit that the law of India is not binding on the rest of the world. But I do say that what I have just quoted represents the canons of justice. Furthermore, this is not only what we have understood in our private, subjective minds, but is also part of the assurances given in the Commission's resolution.

I may be asked: How do you know that this is going to happen? But I shall come to that when I deal with the circumstances existing at the present time. I would only say now that, when religious passions are inflamed, this leads to unrest and to an inability to exercise the franchise freely—and in such circumstances, there cannot be a plebiscite.

I should now like to quote from an *aide-memoire* which was accepted by the Commission. This *aide-memoire* gives an account of a meeting between Mr. Lozano, the Chairman of the Commission, and the Prime Minister of India. In it, we read the following comment by the Prime Minister on paragraph 7(b) of the Commission's resolution of 5 January 1949:

India is a secular State. The United Nations also is a secular Organization. Pakistan aims at being a theorcratic State. An appeal to religious fanaticism could not be regarded as legitimate political activity. Dr. Lozano agreed that any political activity which might tend to disturb law and order could not be regarded as legitimate. The same test would apply to freedom of press and speech. (S/PV.762/Add. 1, Annex 4, page 22).

That is not a private note recorded by the Prime Minister; it is an agreed summary of the conversations.

These are the two documents on which everything turns. These are our international engagements.

I will read out what is contained in document 5, and I hope the members of the Security Council will read this document at their leisure, although it is a long document, because it contains all the assurances given, and these are legal matters, they are matters which have the force of the solemn authority of the United Nations behind them. The

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document in Annex No. 5 of S/PV.762/Add.1, states:

This note sets out the following assurance given by the United Nations Commission for India and Pakistan to India before India's acceptance of the resolutions of 13 August, 1948 and 5 January, 1949:

(i) Responsibility for the security for the State rests with India.

That is a sovereign right. The defence of our external frontiers is India's responsibility and, therefore, there is no question whether the relations between the constituent State and the Union was in impairment by, accession, so far as the present is concerned, whatever may happen in the future. The document continues:

(ii) The sovereignty of Jammu and Kashmir Government over the entire territory of the State shall not be brought into question.

Please mark these words. It is very carefully stated that the sovereignty of the Jammu and Kashmir Government—so there can be no argument afterwards that it is another sovereign State—"over the entire territory of the State shall not be brought into question". The document continues:

(iii) Plebiscite proposals shall not be binding upon India if Pakistan does not implement Parts I and II of the resolution of 13 August 1948.

(iv) There shall be no recognition of the so-called Azad Kashmir Government.

(v) The territory occupied by Pakistan shall not be consolidated.

Now it is a part of Pakistan, according to the Constitution of Pakistan.

(vi) Reversion of the administration of the evacuated areas in the north to the Government of Jammu and Kashmir and its defence to the Government of India, and to maintain garrisons for preventing the incursion of tribesmen and to guard the main trade routes.

I ask any member of the Security Council: What does this mean, that India is to maintain garrisons to guard the trade routes which lie on the external frontiers of Kashmir? The cease-fire line, as the Commission has said, is not a political boundary. The whole of the State remains. The document continues:

(vii) Azad Kashmir forces shall be disbanded and disarmed.

The phrase actually was large-scale disbandment and disarmament, but the Commission said that if you disband them, then you must disarm them.

(viii) Exclusion of Pakistan from all affairs of Jammu and Kashmir.

On page 2 of Annex 5 it is stated:

At the meeting of members of the Commission with the Prime Minister of India in New Delhi on 17 August 1948, (Krishna Menon: Three or four days after signature) the Prime Minister, with reference to Part II, Section B, paragraph 2 of the 13 August 1948 resolution stated: '...that it would be necessary for India to retain troops in Kashmir for defensive purposes as well as the maintenance of law and order. Recalling that the same issue had been raised in the Security Council, he said that the Government of India must have sufficient troops to protect the territory against external attack. Mr. Korbel'—the Chairman of the Commission—'commented that in his understanding, the phrase "law and order" could be interpreted to include maintenance of adequate defence inasmuch as that was essential to law and order.'

Then follows the letter of 20 August 1948 from the Prime Minister, which the Commission said was in consonance with and a fair interpretation of their views.

It may be asked whether these assurances were made by way of a secret instrument, whether the Commission was just trying to state something which was capable of two interpretations, with a view to getting some settlement and hoping that things would work out. If that were so, the position would be rather awkward for the Commission, and its work would not have recorded the progress it did But, in fact, these assurances were published and they were known to Pakistan before it accepted the resolution of 5 January 1949. I submit that whether one takes a political view or a common sense view—I am not saying that the two are in contradistinction—or whether one takes a legal view or an equitable view, when a party signs an instrument with the knowledge of certain facts, then

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the commitments it undertakes are conditioned by and must have reference to those facts. Therefore, so far as India is concerned, these two resolutions and the obligations that go with them are our international obligations.

I have not been able in the time there is to work out each of these in detail, but I will go over them again rapidly. First of all, as I said, the violation of the cease-fire agreement by the accumulation of arms and the training, at that time, of thirty-five battalions, now forty-five battalions, of the Azad Kashmir force, which is not a toy army, but which is as good as the Pakistan army. Its personnel came out of the former British-Indian Army which acquitted itself with great valour in North Africa, in Italy and in various other parts during the war. This force consists in the main of ex-servicemen and their descendants. In addition, there are large numbers of irregulars trained in guerrilla warfare, with about 600 or so in training at one time, and after training they are thrown back into the community. I refer to the air force and the military gun emplacements, and this is the state of affairs so far as Part I, that is, the cease-fire, is concerned. It is for the Security Council to consider whether any step that we have taken was in breach of the first condition, which is the maintenance of the cease-fire. The Government of India has not violated this cease-fire agreement. We have not introduced into Kashmir any more troops or any more equipment than we had at the time of the signing of the agreement.

In fact, we have withdrawn large numbers and we have so much less people there, since, as the whole world knows, the size of the Indian Army has been reduced and it also has other responsibilities, particularly in the way of assisting in agriculture and economic development. Therefore, we ask the Security Council to look at this problem. Have we been in default? That is not sufficient, because we are not on the defence, the default is on the other side, and, what is more, it is default that goes to the root of the agreement. Just as in every contract, a breach of an ordinary superficial condition does not very much matter, it is usually known as a breach of warranty. But a breach of a condition is something that changes the character of the contract, and if it goes to the root of the agreement, then the whole of the agreement is violated.

The only thing that today remains in which we have made our contribution is that the cease-fire line is maintained, the observers are respected, and I have given the solemn undertaking of the Government of India, that, irrespective of our legal rights, irrespective of our rights under the Charter, and irrespective of our desire to have the aggression vacated and to see an end of this business, the Government of India will not move one soldier, one gun or fire a shot which will violate the cease-fire agreement. But, at the same time, it is our bounden duty to protect our territory, and the Security Council, in our submission, has a solemn obligation to take into account the phrases that were uttered by the Foreign Minister of Pakistan in regard to what can happen. We do not live in terror or in fear but at the same time we, as a Government with our responsibility to the United Nations, have an obligation to remain under conditions of prudence.

Nine years have passed since then. Mr. Graham's reports are before the Council. On account of there being no time, we have not been able to go into them here in the Council, but they set out the two different points of view and in their relation to the UNCIP findings. The whole of Mr. Graham's activities have been concerned with this one problem of demilitarization. Those who read the newspaper reports at that time were likely to be misled into the facile impression that, out of twelve points, ten or so were accepted; the others were not. One can mention a number of points, but the key point is point 7, and that was not accepted. It could not be accepted

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because it violated the competence of the Security Council in Jammu and Kashmir and the sovereignty of the Jammu and Kashmir Government. As Prime Minister Nehru said yesterday: "We agreed to concur in a plebiscite, but the Pakistan army promised to go." It is still there—and I am not saying this; the Foreign Minister of Pakistan told us on the first day. "We are prepared to withdraw." That means that they are there; and this is nine years after. And I say that this should be a unilateral action under this agreement.

So far as we are concerned, it is our duty —even though we are not remiss—to answer briefly to the allegations of breaches and defaults.

The first breach alleged against us is the Constituent Assembly. About this I have spoken so much, and I believe that when the documents of this Constituent Assembly are read, when its functions are understood, members of the Security Council—the majority, if not all of whom belong to countries and systems which want to see the functioning of bodies of this kind—will appreciate the fact that this has been concerned with the economic and the constitutional developments of that part of the area. It does not—but even if it did—decide something against accession, that would not be binding on the Government of India. It would be *ultra vires* of the Government of India Act. I fully concede that the Government of India could cede any territory.

Then the Foreign Minister of Pakistan stated and implied so many times—and newspapers do the same—and when one has no information it is easy to come to very quick conclusions—that the Government of India delayed these matters. I invite representatives to read the proceedings of the discussions with Mr. Graham and others who have tried demilitarization. How many concessions have we made? How many agreements of a provisional character have we made in private conversations?

It goes further than all that, but I want to say here and now that they are no longer operative because they have not been accepted. They were provisional proposals put forward for this purpose.

That takes us to the present position. And I want to submit to the Council that it is not a question of the mathematics of 21,000 and 6,000. So long as there are the violations which I have complained of, so long as there is a campaign of hatred which it is my duty to point out, it ends—as in the case of the Roman emperors, who said: "Carthage must be destroyed."—with "India must be conquered".

Representatives on the Council cannot expect us to submit to this without exercising our human rights of survival. I am going to refer to this in a moment. The present position is that nine years have passed.

The Foreign Minister of Pakistan twitted me on this *rebus sic stantibus* doctrine. I must say I enjoyed it. I have not the slightest objection to arguing the doctrine of *conventio omnis intelligitur rebus sic stantibus,* but I do not know how the Security Council can take upon itself the powers of a tribunal. That is why I did not want to quote legal doctrine but, unless I am mistaken—and I have done some research on this—the Foreign Minister of Pakistan was in error in informing this Council that it had turned down this doctrine. The Security Council cannot turn down this doctrine; it is a doctrine of international law that goes back to the days of the glossatores. It can no more turn down the doctrine of *rebus sic stantibus* than it can turn down the fundamental basis of law. And here we have the best authority, and perhaps the best people to look into this—and I hope other nationals will not mind—are the British and the Americans because they have had a longer period of the conclusion of treaties, and getting out of them and having to modify them, and so on. A large volume of law has been developed. I am free to concede to Sir

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Pierson Dixon that, according to his system, you can still put a man in prison or lock him up on a Sunday, or something of the kind, under a statute that has been prepared. That is because the conditions have not changed in that regard. The British can now plead the Statutes of Mortmain, but they can still plead the Statute of Westminster over the first. But so far as international law is concerned, the distinguished English judge, Sir Arnold McNair, whose independence has been placed beyond doubt by his giving judgement against his own country in the World Court—although the World Court does not give judgements—in the Iranian dispute, said:

> It is reasonable that circumstances should arise in connexion with treaties (as they do in the sphere of private law contracts) in which it is necessary to imply a term or condition. When it is clear that, if the parties, when negotiating, had adverted to some contingency, they would have agreed to provide for it in a particular way, it is reasonable to impute to them an intention of contract on the basis of such a provision and to imply the satisfactory term or condition in the treaty. (McNair's Law on Treaties, p. 233).

I shall come back to more conclusive statements from McNair, but in order that I may not be regarded as being completely involved in the English way of thinking, here is an American authority, Mr. Hall, who has written as follows:

> Neither party to a contract can make its binding effect dependent upon conditions other than those contemplated at the moment when the contract was entered into, and, on the other hand, a contract ceases to be binding as soon as anything which forms an implied condition of its obligatory force at the time of its conclusion is essentially altered.

The United Kingdom regards the cessation of, or a vital change in, the specific *raison d'etre* of a treaty as a ground for recognizing the *ipso facto* termination of a treaty. The principle applies to a change which destroys the very object of a treaty's stipulation: *cessante ratione cessate lex.*

As an illustration of the applicability of this doctrine, reference may be made to a proclamation issued by President Roosevelt on 9 August 1941, which announced that certain treaties had become suspended and inoperative. He said:

> Whereas the conditions envisaged by the convention have been, for the time being, almost wholly destroyed and partially imperfect, enforcement of the convention can operate only to prejudice the victims of the aggression (Krishna Menon: That is what we are) whom it is the avowed purpose of the United States to aid (Krishna Menon: And that phrase "to aid" is a statement in which my country believes) and whereas it is an implicit condition to the binding effect of the convention that these conditions envisaged by it should continue, when such a material change has in fact occurred.

The circumstances were part of the consideration of the contract, assuming that there was one. It was because of these circumstances that the promise was made and the disappearance of these circumstances, which were the foundation of the promise, rendered the promise ineffective.

These are more modern authorities. President Roosevelt was a modern person in this connection, and so was Sir Arnold McNair. But Oppenheim is the classic authority. He wrote the following:

> Vital changes of circumstances may be of such a kind as to justify a party in demanding to be released from the obligations of a treaty which cannot be abrogated by unilateral notice. Many writers defend the principle *conventio omnis intelligitur rebus sic stantibus* and assert that all treaties were concluded under the tacit condition *rebus sic stantibus.*

In substance—although it has on occasions been abused by providing a cloak for lawless violations of treaties—the doctrine *rebus sic stantibus*, when kept within proper limits, embodied a general principle of law as expressed in the doctrines of frustration, (Krishna Menon: "frustration" in this particular case) or supervening impossibility of performance, or the like. It is in this sense—and in this sense only—that every treaty implies a condition that, if by an unforeseen change of circumstances an obligation provided for in the treaty should imperil the existence of vital development of one of the parties, (Krishna Menon: I repeat the words "should imperil the existence of vital development of one of the parties") it

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should have a right to demand to be released from the obligation concerned. Thus conceived, the doctrine *rebus sic stantibus*, when treated as a legal doctrine, embodies the same principle while the law of various countries has admitted as a ground for dissolution or discharge unenforceability of a contract owing to a vital change of circumstances. (McNair's Law on Treaties, page 492).

Then it goes on to show how British practice has worked in this way. I am not relying on this doctrine, because I am not going to quote this doctrine. My Government does not accept the view that the Security Council is called upon to take over the functions of the World Court, but the substance of it is important politically. There was some suggestion that I have avoided even mentioning this because there is something wrong about it.

Now *rebus sic stantibus* is a very respectable ancient doctrine. But of course it is the law; it is one of those outstanding instances where the law is conditioned by fact. What the World Court has said in many instances is that the doctrine still holds. But these particular circumstances do not apply to the doctrine.

In some cases the Permanent Court of International Justice, particularly in the case of Upper Savoy, said this years ago. I cannot find any evidence in the proceedings of the Security Council—and I shall be prepared to withdraw this statement if I were shown it—where the Council has turned down the doctrine as a doctrine. I can see no evidence of it. If it did, then with great respect, it would be acting beyond its own powers, because it is not a law-codifying body. You would have to go to the International Law Commission. That is so far as this is concerned.

May I now try to deal with people who are not lawyers. One is a very dear friend of my country, and that is the former Prime Minister of the United Kingdom, Sir Anthony Eden. I hope I am not starting any difficulties in regard to the sides taken in other controversies. The four Foreign Ministers, Mr. Bidault, Mr. John Foster Dulles, Mr. Molotov, and Mr. Eden were at the Foreign Ministers' Conference in Berlin in January and February of 1954, and the question of the treatment of Germany arose.

It is neither my purpose nor my business to go into the merits of that question. I have only to deal with what is the effect of an agreement in certain circumstances, whether the whole of it ever suggests, and in all this, on the basis that there was an agreement—I have been at pains to point out the nature of that agreement, and I do not want anything that I say to be stated here afterwards that even in 1957 the representative of India said there was an agreement. I have to be extremely careful in view of the previous history. Here is what Sir Anthony Eden said. This is with reference to the Potsdam Agreement, where the Russians were insisting that on account of the Potsdam Agreement, the European community, and various other things, were not possible, and there was this clause and the other clause. This is what Sir Anthony Eden said on 1 February 1954:

> We are all pledged to give the German people the opportunity to reconstruct their lives on a free and democratic basis, so that they may take their place among the peaceful peoples of the world. This principle was embodied in the Potsdam Agreement, and referred to by M. Molotov on January 25. We all have a duty to uphold it. (Krishna Menon: It is not as though they were just scraps of paper) But that does not mean that all the provisions of the Potsdam Agreement are applicable. The Soviet Delegation itself has said that some of them have been overtaken by events. (Krishna Menon: This overtaking of events is a political issue) It is indeed clearly stated in the Agreement itself that it is intended to cover the treatment of Germany in the initial control period.

That is again another matter to be taken into account. If all this argument, all these resolutions and everything else were in terms of the cease-fire, hoping that they will be terminated quickly, then you get a

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different picture after nine years. Supposing this went on for ninety years, are we still in this business?

Then there is the final sentence of what Sir Anthony Eden said:

> We have to look at the facts as they are today, and not as they were nine years ago.

The nine years is a coincidence. If I quote Sir Anthony Eden, who is not a lawyer, distinguished as he is, I may perhaps be regarded as quoting lay authority on a subject on which I have just now quoted a Latin doctrine. Therefore, we come to Mr. John Foster Dulles, who in the days of less political involvement was a distinguished lawyer. And once a lawyer always a lawyer. This is what Mr. Dulles said on behalf of the United States of America, as Secretary of State, on 26 January—it says 26 January; I did not put down this date:

> These decisions of Yalta, which my own Government shared, were understandable in the context of the day. The German war was still in full vigor and wars are not won by a spirit of tolerance. (Krishna Menon: We should have learned that.) But it is said that today, nine years since the German armistice, one of the parties to the Yalta Conference should attempt to revive the bitterness and hatred of those days and the cruel decisions which that hatred and bitterness occasioned.

The implication of it is that when conditions change—in this case the whole position is reversed—the return has been created. Now we come to Mr. Bidault who said the following:

> The Peace Treaty must be of such a nature as not only to provide a suitable conclusion to the war, but to avoid sowing the seeds of a new conflict. (Krishna Menon: This is one of those things which in the case of Kashmir the distinguished members of the Security Council may well bear in mind.) In my own view there are two fundamental considerations. The peace must not be vengeful peace or an imposed peace. It must look to the future and not only to the past. It would be irrelevant to insist on too closed an interpretation of the Potsdam Agreement, in the drafting of which France, as a matter of fact, had no part.

France, as a matter of fact, had no part in it, so it subscribed to it afterwards. So its action is something after the fact.

Now we come to Mr. Molotov. Mr. Molotov said the following on 1 February 1954, the same day as Mr. Eden spoke:

> According to these agreements the Soviet Union, the U.S.A. and the U.K. would act together in helping the German people rebuild their State on democratic and peace-loving principles. In due time France associated herself with these decisions, although M. Bidault now and then tries to avoid discussion of these agreed decisions. I suggest, however, that these agreements are no less necessary to France than, let us say, to the Soviet Union.

That is the statement on the other side. But then he goes on to say:

> We acknowledge that many points of the Potsdam Agreements have become outdated.

That statement, apart from any political views one way or another, has very considerable force, because here is the cent percent, more or less, saying, as regards the Potsdam Agreement:

> We acknowledge that many points of the Potsdam Agreement have become outdated. Nevertheless, the fundamental meaning of these agreements remains fully enforced.

For purposes of reference, these quotations are from United Kingdom documents issued by Her Majesty's Stationery Office, relating to the meeting of Foreign Ministers of France, the United Kingdom, the Soviet Union, and the United States of America, Berlin, 25 January—18 February, 1954, Command Paper 9080.

These may all be regarded as universal, and it may well be argued, do they apply to this particular instance? Therefore, we come to the Commission. What does the Commission say? It says:

> In a sense, the problem of the withdrawal (Krishna Menon: That is of Part II of the 13 August agreement) lies in the fact that the sequence for the demilitarization of the State as contained in the Commission's resolutions of 13 August 1948 and 4 January 1949, is not adequate to solve the present situation. The situation in the State has changed. The resolutions remain unchanged. (Krishna Menon: That is

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what happened to the last resolution the Security Council passed). Again in this question the Commission endeavoured to find the means of reaching an agreement without contravening the terms of the resolution; but taking into account the changes that have occurred in the situation, (Krishna Menon: That is what the Commission is saying: taking into account the changes that have occurred in the situation) it found that the Government were strict in adhering to the letter of those clauses which met their position. (S/1430, Supplement No. 7, para. 249).

The Commission says in the Third Interim Report, in another paragraph:

> Over a prolonged period in a changing and dynamic situation (Krishna Menon: And this is particularly true of the part of Kashmir which is still under the administration of Jammu and Kashmir) and restricted by long standing related clarifications which proved to be a real impediment to reaching agreement, the framework of the resolution of 13 August has become inadequate in the light of factual conditions in the State. The Commission has been unable, therefore, to mediate much beyond what is today another outmoded pattern. (*Ibid.* para. 283).

There are other instances for which you and me are responsible. One was the question of Trieste. Here was an agreement that something had to be done in a particular way. Something else was done and the Security Council did not regard that as a breach of its resolutions. The Italian Peace Treaty provided for the establishment of the Free Territory of Trieste. The Statute for the Free Territory conferred upon the Security Council certain functions and responsibilities in respect of administration of the Territory, including the appointment of the Governor in consultation with Yugoslavia.

At its ninety-first meeting on 10 January 1947, the Security Council adopted a resolution formally accepting the responsibilities devolving upon it under the relevant treaty document. Here is an acceptance by the Security Council that makes it a party, a point to which my Government wants to come back. The Council, however, failed to agree on a candidate to be appointed as Governor and the military administration of the area continued.

On 5 October 1954, the representatives of Italy, the United Kingdom, the United States and Yugoslavia agreed on certain arrangements concerning the future of the Territory different from those provided in the Peace Treaty, and the people seemed to have been comparatively happy. That is the history of Trieste.

There is another instance to which I want to refer. I do not have the time to go into its history, but all the members, particularly the great Powers will recall the discussions in Bretton Woods, London, San Francisco and other places in the founding of the United Nations when it was definitely laid down that any State that was a creation of Nazi power could not be a Member of the United Nations. That was the basis on which the United Nations was founded.

On 9 February 1946 we passed a resolution. My Government voted for it. It stated:

> 1. The General Assembly recalls that the San Francisco Conference adopted a resolution according to which paragraph 2 of Article 4 of chapter II of the United Nations Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power.' (Resolution XVI 7 of General Assembly resolutions, first part of first session).

This was a resolution barring for ever the admission of Spain to the United Nations. Last year, by unanimous vote, we admitted Spain. Why? Because conditions had changed. The same rulers were in power and the conditions of origin had not been changed by history. But the conditions of the world had changed.

I want now to deal with plebiscites for a moment. These were all in regard to general agreements. I would like to invite the attention of the Council to the history of plebiscites. There are large numbers of plebiscites which had been initially agreed upon, the majority of which were never carried out. The Covenant of the League

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of Nations, which was drafted in much greater detail and probably with greater reference to some of these matters, contains the law and the practice of the time. Article 20 concerns abrogation of inconsistent obligations.

Plebiscites may be required in certain times, by the treaties of peace. After the First World War, the method of plebiscites was used in a number of cases, and wherever those plebiscites were held in a reasonably short time, they took place. There are five instances: in Schleswig in 1920, as recorded in part 3 of the Treaty of Versailles; the plebiscite of the Olsztyn and Marienwerder in 1920, also the Treaty of Versailles; the plebiscite of Klagenfurt Basin and Upper Silesia in 1921; and in Sopron in 1921.

These were plebiscites that were actually held in pursuance of international decisions that were taken. But each one of them was a plebiscite that became effective soon after the decision.

But when we come to other plebiscites like the one we have before us, the situation is rather different. There was an attempt to take a plebiscite in Teschen, Spisz and Oraba in 1920. There was a decision of the League Council of September 1919. There was a proposal for a plebiscite in Vilna in 1921. There was the plebiscite of Tacna and Arica provided for in the Treaty of Peace between Chile and Peru. So in whatever continent they were, these plebiscites were provided for.

Now, what happened to them? In the Vilna case, the conclusion with regard to the attempted plebiscite shows that when there were delays in carrying out the plebiscites, "the inevitable consequences of these is to make impossible for the Council"—the League Council—"to adhere to the plan of a speedy popular consultation as originally contemplated". Consequently the Council has therefore been compelled "to consider whether the parties interested really and sincerely desire a popular consultation, if it could not be possible to devise some more simple and effective procedure". (*League of Nations Minutes, Twelfth Session, Annex* 1630). The result was direct negotiations.

Then you come to Teschen in 1920. This is an instance of plebiscite pressure, which has some relation to the present circumstances. When tension increases and racial hatreds flare up, it is not considered opportune to hold a plebiscite. (*Plebiscites Since the World War, Wembeuth, Volume I, page* 156).

Then there is the classic instance of the French State in Alsace-Lorraine. In regard to Alsace-Lorraine, Andre Tardieu of the French Government of the time, who was High Commissioner for this area, said:

> To hold the plebiscite now, the French maintained, would be to sanction the wrong done in 1871 by admitting the lawlessness of this act of violence. (*The Truth About the Treaty by Andre Tardieu, page 237*).

It almost looks pathetic in these words.

The best authority—in fact, the only authority—on plebiscites is Matien Johanes. He says:

> The plebiscite can render effective service only when and where such binding agreements free from all force have been reached in advance by the parties involved, to the effect that a majority of fixed and agreed proportion shall prevail, and where the plebiscite is employed solely to establish which side of the issue involved can muster this majority and where the resulting minority is assured of a fair degree of local autonomy and enjoyment of its own language and religion.
>
> No State at the present time from the point of view of constitutional law recognizes the right of secession by way of a plebiscite. By doing so, it would invite its own destruction.

I did not write that one.

I shall now deal with breaches on the other side. I am afraid I have arranged my time so badly that I will have to rush through this. Therefore, I shall only itemize them. If we come back again I shall go into the details.

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The first of the breaches on the part of Pakistan is withholding information from the United Nations that it was a combatant and that it was a party to the invasion; and allowing the United Nations to proceed under Chapter VI, thinking on entirely different set of circumstances. In regard to this, there are a number of observations by UNCIP to which I made reference in my own statement before the Council.

The next is with regard to non-withdrawal. By withdrawal is meant the removal of striking capacity in that area. It is not merely to put your foot on the other side of the frontier. Withdrawal of an army is the withdrawal of striking capacity. Not only has the Pakistani Army not withdrawn, but the changed conditions in view of the imbalance of forces created by rearmament is such that withdrawal has become practically impossible.

I have already referred to the violations of the cease-fire agreement—the training of the Azad Kashmir irregulars, the importation of arms and the building of airfields for the taking off of fighter jet planes. But the most important, from a constitutional point of view, of this violation to which my Government with great respect expresses its surprise that the Security Council has not given attention, is the integration of the territory.

Now, all I have said in the last two or two hours and a half, paragraph by paragraph, referred to the fact that Pakistan has no *locus standi* in this area at all, the only way Pakistan came there was by force and by violation of every moral law and every political law, of every international canon of behaviour. Therefore it had no right whatsoever to incorporate the territory. The Council took a very strong view in regard to the Constituent Assembly, which had done nothing of this kind, which is only proceeding in pursuance of a legal action. But what is on the other side? The distinguished Foreign Minister of Pakistan asked the other day, "Why has the Government of India become suddenly exercised over Chitral?" The reason is very simple. The Pakistan Constitution Act was passed only very recently. And it was only when that constitutional act was passed that we raised this constitutional point. Article 1, clause II—

The President: I am sorry I have to interrupt for a moment, just to ask how much time the representative of India will need to conclude his statement.

Krishna Menon: Sir, I am doing my best; if I spoke any faster nobody would understand me. On the other hand, the Security Council appreciates that the press of the United Kingdom, the United States, France and other countries are poorly informed about the situation. The Security Council has passed a resolution on the last occasion without taking into account some of these matters. My Government has the duty to lay these facts and record them before you. We proceed on the basis that no Member State would take any steps in these matters without considering what are all its implications—what is past, what is present and what is ahead. That is why I am quite prepared to stop and do it tomorrow if that is the will of the Council. But I am quite prepared to go on. In have been conditioned to finish today.

The President: My only reason for asking the representative of India is that we have to find out how we are going to proceed. I would like to know if possible what the total time would be, because if it is very long we would have to adjourn the meeting until 8-30 this evening and then continue.

Krishna Menon: The incorporation took place in the Pakistan Constitution and with regard to Chitral—

The President: I am sorry to interrupt. I did not get the reply to my question. Will it be a very long time?

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Krishna Menon: I will try to finish in half an hour, but I can give no guarantee on that. I am not trying to drag this out.

The President: In that case I think the representative of India can proceed.

Krishna Monon: The accession of Chitral has been accepted by the Government of Pakistan and it is included in the arrangements in the Constitution as a State that has acceded. Now, Chitral cannot accede under the terms of the Cabinet Document or under the obligations of British Crown in the past, because her name does not appear in the States that are entitled to accede either in the 1935 Act or thereafter. What is important—we are up against time—I could read to you dozens of documents of the British Residents, of the Secretary of State for India in London, where the suzerainty of the Maharajah of Kashmir over Chitral is accepted by the British Government. And what is more, he received tribute from him and subsidies on the other hand. As for Chitral, the position is—whatever the suzerainty of the Maharajah—it is part of Kashmir.

So the Pakistan Government, I do not know for what reason, because they amalgamated the others in other ways, received the accession from the Mehtar of Chitral—the ruler of Chitral—which he had no right to give because he was only a feudatory, he had no right of accession. And it was incorporated in the Pakistan Constitution.

The matter came up before our Parliament and we have stated the position. It is not as though we were taking any effective steps to undo this business or to violate the cease-fire agreements, but the incorporation of Chitral is therefore against the agreement of 13 August, and what is more, a violation of the arrangements reached when the British left India. I make reference to part I of the Constitution of Pakistan and Article 1, Clause II, sub-section (c), which gives the inclusion of the territories of the Republic of Pakistan. There are many items, but the items that are relevant here are "(c)"—territories which are under the administration of the Federation but are not included in either province. That is to say, anything that is administered by the Pakistan Government but is not one of the provinces becomes part of Pakistan. Now, the whole of these occupied territories are administered by Pakistan and so under Article 1, Clause II, sub-section (c), Pakistan has illegally incorporated these territories. Therefore, there has been a violation of the cease-fire agreement; a non-withdrawal and the incorporation of these territories. This applies to Gilgit, Baltistan, Hunza, the whole of Western Kashmir and all those areas which are on the other side of the cease-fire line. And therefore if the changing of either the *status jure* or anything else was wrong in so far as the Constituent Assembly was wrong—which we deny—here is a major sin. So we ask: Why is it true that a gnat swallowed this camel?

The Security Council has been faced with this fact, that the territory, over which they had no right whatsoever under the UNCIP agreements, which they are supposed to vacate, where only local authorities can function, has been incorporated in the territory of Pakistan. But the most difficult and the most important of these violations are in regard to the campaigns that are carried on in Pakistan itself. Now, this has varying tempos, sometimes it is more, sometimes it is less. It is not only aimed at the personalities of India, but also against the whole of our country. "The liberation of Kashmir" says the Governor-General of Pakistan on 19 September 1956 "is a cardinal belief of every Pakistani. It is an integral part of the Pakistan resolution, and Pakistan would remain incomplete until the whole of Kashmir is liberated." That was a sort of blood-curdling statement, but there it is.

The *Times* of Karachi carried the Pakistan Prime Minister's speech on the tenth Independence Day. "I am ready for the

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liberation of Kashmir," he said, "but I want the people to get ready." The freedom of Pakistan, he said, would not be complete without Kashmir. He exhorted the people to acquire the spirit of unity. He said that the Kashmir dispute was going before the Security Council, but the nation would not rest there. I want to draw your attention to that phraseology: "The nation would not rest there." So the Security Council is only part of the procedures to carry out other designs.

The Prime Minister made another speech in which he said the following:

The crowd listened to the Prime Minister and cheered him when he declared that he would not rest until the Kashmir Moslems were freed and that he would not allow his countrymen to become slaves, even if they were to live without food or clothing.

The Governor of West Punjab said:

So long as a single Pakistani is alive, nobody dare snatch Kashmir from Pakistan by force.. If the problem is not settled immediately, the whole of Asia would be engulfed in the flame of war which might lead to a world conflagration.

He also said: "We would not mind being cut into pieces but will certainly conquer Kashmir."

Here is another statement immediately afterwards. "We will have to exhibit our strength if we want to take Kashmir," the Prime Minister said. "It is not only the entire Pathan population"—these are the people from whom the hordes came before —"of Pakistan and the tribal areas that will rise up for the holy Jehad"—the holy crusade—"in Kashmir, but our brothers from across the Afghan frontier will also throw in their lot" with their cause. If that is not an incitement to war against our country, I should like to know what it is.

I shall not read in full the statement of important persons and religious leaders but I shall refer to them. Here is one of the most important leaders:

Today Pakistan is standing on the verge of war and sooner or later she will have to go to war against India.

These are newspapers, but I do not propose to read them. Since the Security Council passed its resolution, there have been considerable demonstrations in Pakistan, and the whole tenor of these is the conquest of India, that is to say, the leading of armies into our territory, and there is the exhortation to the people to carry on this campaign. It says that "it means fear of God, financial sacrifices by every individual, whether trader, master or clerk getting together and making a firm resolve to unite the undivided nation." This is one of those things on which India has definitely given its pledge, and no responsible person in India would ever say a thing like that. They urge purification of the heart and feelings of unity. Everyone should be overflowing with excitement and make it a point to assemble at fixed places in their respective towns. In all these public meetings Pandit Nehru would be asked to hand over Kashmir by a given date and give up forthwith the annihilation of Indian Moslems and enmity towards Pakistan, "failing which batches of ten lakhs," meaning a million, "would march towards Amritsar and Patna."

These are some of the slogans, which are officially based. They are not sponsored, because these demonstrations are received by the Prime Minister; he spoke to them. I cannot read the Hindustani, but I shall read the translations. Here is one:

If Nehru is finished, that would be the end of Congress, and the capture of India would become certain.

The next:

Ten lakhs should get prepared for the march towards Amritsar.

Here is another poster:

India shall be conquered in 1957 only if every person gives up falsehood and fraud.

That was a good idea: The next one:

If every person would make some sacrifice, India would be conquered.

The next one:

India is bound to be conquered after these ten years of suffering. Get ready.

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The next one:

Get united. Get righteous. India will be conquered.

Leave all the parties and turn moslem.

Give up all rivalries. India will be conquered.

These are all different posters.

Weigh correctly. Make an honest living. India will be conquered.

Then there is another thing: salutations to every person they meet, "India will be conquered."

Shah Rahmatullah Wali predicted that Moslems in 1957 would conquer India: Therefore. march. Once India is conquered all ailments will end.

Fulfil your promises. Don't tell lies. India will be conquered.

That is preposterous. Presumably that is the truth.

Do away with all your enmities during 1957, if India is to be conquered.

Settle all your mutual affairs. India will be conquered.

Observe complete Hartal on date announced, if India is to be conquered.

I have quoted only some of these. There are some which it would not be aesthetic to read in the Security Council. So this vast campaign of religious hatred and fanaticism is fanned. That is the position.

Now I think it is necessary for me to state to the Security Council the position arising from all this. In order to obtain a vacation of the aggression and to implement the complaint on which we came here, we joined in every endeavour that was possible. The view that is taken with facility that we committed ourselves to something without pre-conditions is, I submit, wrong. It is not only wrong, but I should like to quote to you the appropriate provisions of the Charter. I refer to Article 24, paragraph 2, of the Charter. I shall read only one sentence:

In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations.

The Purposes and Principles of the United Nations are, as far as is relevant to this, set out here, and this is the important part:

...and to bring about by peaceful means, and in conformity with the principles of justice and international law.....

I submit that the considerations of international law that I have pointed out to you, the considerations of justice that I have pointed out to you, the desire of India to live as a democratic community giving equality to our peoples to enable a large democracy with 196 million voters to demonstrate to ourselves and to the world that that way of life is possible—that is one of the treasured objectives our people have.

Therefore, the further article in the Charter, referring to this particular matter, which is binding upon our friends opposite is article 2 paragraph 4:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

I am directed by my Government to say that it has been sometimes said, perhaps with a feeling of apprehension, that the peoples of India and its Government have not reconciled themselves to the idea of partition and the existence of Pakistan. I tell this Council what we have told all the world: that we have no desire whatsoever to undo the partition agreement. It is the price we paid for our independence. We did not like it. Nobody likes their country to be cut into pieces. But it was better than civil conflict at that time.

It was an agreement we entered into among three parties, and that agreement we shall honour. We have no desire to reunite India as before partition. In fact, we have enough problems of our own. We have enough headaches and difficulties, and we do not want to take any more.

So I want to make this solemn statement that any propaganda, any statement, any fear, any apprehension, any suspicion that exists in anyone's mind, that my country, my Government, or our people have anything but the desire to live in

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peace with our neighbours does not correspond with the truth.

We have come to so many agreements with them on various matters. They are suffering, we are suffering. We have families that live on the two sides. We have lost a lot of territory in the sense of the constitution of our State but we are getting the people. There is no responsible person in India—never mind the political parties, but there is no responsible person in India—there is no responsible body of opinion that wants to venture on an act of hostility. I ask you to read the Indian Press and the statements of Indian leaders and compare them with what I have said. I confess that there have been one or two student demonstrations.

Our leaders have done everything they can to persuade our people, and successfully persuade them—we are a free country, and we cannot stop them—not to indulge in expressions of hatred either toward Pakistan or toward the United Kingdom or toward anybody else they may think is involved in this matter.

But the main thing is this: We have no desire to undo the partition. We do not regard that as a *pro tem* affair. We agreed to it with our eyes open. We knew the consequences. We have suffered economically, politically and culturally. We have created problems for ourselves. But, if we were now to try to do anything, those problems would become worse.

We recognize them as a sovereign State. And not only do we recognize them, but they are a sovereign State. We recognize all their attributes of sovereignty. We have no desire to interfere in their affairs. We are not interested in their form of government. They can have elections, if they want them—and they do not have to have them, if they do not want them. We only want to be left in peace. We will not at any time yield to provocation to use force. But if our territory is violated, we shall look to the Security Council, to the Charter, to the public opinion of the world. And my country has given continuous evidence, tangible evidence, of its loyalty to the Charter, of its willingness to take on responsibility, of its readiness to take on unpopular roles in what it considers its duty in regard to international obligations. And therefore any suggestions, from whatever quarter it may come, that India nurses some hatred, that Kashmir is a jumping-off ground for something else or part of a score that is not settled, is entirely unhistorical.

I want particularly those who have been closely related to us in the past, who know some of the background, to bear this in mind. India will honour its international obligations. The only obligations are these two resolutions. Those two resolutions have to be judged in the light of the words in them, the spirit in them—I do not say we will be going beyond the words of what they intend—which can be reasonably drawn from the printed words of the time and the assurances given as solemn undertakings. And we shall honour our undertakings. But time has passed and certain things have happened. Our position still is that the State of Jammu and Kashmir is Indian territory; it is part of the Indian Union.

We came here with a complaint of aggression. In our submission, it is the duty of the Security Council and the duty of Member States through diplomatic channels, through co-operative action or individual action, to exercise their influence in such a way that this aggression is vacated.

My Government invites the representative of any Government to go into Kashmir. No one will stop you. You can go anywhere you like—ask anybody you want. We have neither silk curtains nor bamboo curtains nor anything of that kind. You have to obtain permits and pay for your living. But, apart from that, it is an open country, where there are hundreds

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and hundreds of foreign journalists. It is a territory where, for a long, long, long time, there has been backwardness. And it is no argument on the part of my Pakistani colleague to come and tell us that the Maharajah of Kashmir paid the British Government—what was it?—a half million pounds, and therefore bought this piece of land.

I ask Mr. Lodge whether the United States Government would be willing to take that view about Louisiana and return it to France, or to abdicate its rights over Florida and return it to Spain, or over Alaska and return it to Russia, or over Rhode Island and return it to whomever it belonged. Purchases have been made in the past—and, if there has been any immorality about the purchase, we were not the rulers at that time. Her Britannic Majestiy, Queen Victoria, held the responsibility. And we are not shirking the responsibility, because we are her successors in title. So whatever has happened there has happened when Pakistan and we were one country—and we cannot now separate the sheep from the goats.

I submit the views of the Government of India to the Security Council in the firm belief that, above all things, it has to be remembered that there is prosperity in the land of Kashmir. I have not been able to read the various commentators—Scandinavians who are professional neutrals, have been out in our country and have seen these things. —but there is peace and prosperity, there is a development of democratic institutions among a people who have been steeped in ignorance and backwardness for generations and have had no industries, no development of waterpower, no exercise of the franchise. That has been done in association with a country where not only are there 200 million people entitled to exercise their franchise but where, over and above that—in our land of India—there are probably 200,000 bodies where people exercise power in that way, where every single person, from the President to the lowest village official, is elected.

Any unsettlement can only be based on this appeal to non-secularity; it can only be based on this appeal to religious prejudice. The only "claim" that can be put forward on behalf of the Pakistan Government, in regard to Kashmir, is that the majority of its population is Moslem. And my Government—totally, for all time—repudiates what is called the two-nation theory. We will not accept as the basis of our State the religion of a people. The United Nations is a secular organization. The majority of you would not discriminate against a Catholic or a Protestant because such a person happened to be in the minority. But here is the Constitution of Pakistan, which says that, if a man belongs to the Islamic religion, he can be the President of the State.

I invite you to read an article by Mr. Sulzberger, of the *New York Times*, a paper that is consistently hostile to us on every question—an article which refers to the position that there will be no democracy in Pakistan. I am not quoting him as an authority; I am quoting him as a friend of theirs. So there it is.

That is what we are asking for. Whatever there may be of right or wrong in a problem, if there are difficulties in a situation—and I repeat: a situation—it is necessary to find means of settlement.

I ask the President and the members of the Security Council whether, in the ten years that my country has been represented here, it has been found wanting in attempts to reach these solutions. Can the Government of Pakistan tell us that, in very complicated matters of other kinds, we have not gone through a great deal of negotiation and settlement along with them, and that we have not bent over backward to find settlements? We are in the United Nations with a record that is clean.

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On the other hand, there is the crime of invasion—and that is a crime that cannot be tolerated. We have not asked that anybody be branded an aggressor. Why? It may be a mistake on our part.

I have deliberately not referred to suggestions that have been made by the Foreign Minister of Pakistan, as to what he regards as solutions, because they are not solutions and they are violations of the Charter and of international law and they are a mockery of the undertakings that rest on the shoulders of the Pakistan Government.

My Government does not regard it as right, so far as its duty to the Security Council is concerned, to discuss those proposals unless the Security Council wants to discuss them. So far as we are concerned, there are no proposals. We have given the solemn undertaking that we shall not use a gun, we shall not fire a bullet, we shall not move an aeroplane over the cease-fire line to assert our rights, that is to say, we shall not determine the future of our country. We shall seek to solve every problem peacefully, but our peacefulness is limited by the fact that we shall not brook aggression upon our territory. And we look to each one of you to stand with us if there is a violation of one square inch of Indian territory, because we are loyal Members of the United Nations. To each of you we are bound not only through the United Nations but by bilateral ties and by appreciation and respect, even when we are in fundamental disagreement. And I submit we have the right to look to you in a matter of this kind.

It is not the kind of problem where a resolution can be passed and it can be said that somebody has disobeyed—I told you about the nature of resolutions. The only resolutions that are binding on us would be resolutions under Chapter VII, and this problem is not under Chapter VII. But I am not arguing legalities, I am not the defendant in this case, I am the plaintiff, although it may not so appear after these seven, eight or nine years. That is because we are a mild and meek people, which is shown by our patience in this matter, our forbearance, our desire to explore everything. The Security Council, if I may say so, and if you will pardon the expression, has no right to think that our country is going to throw overboard the principles of the Charter, our insistence upon a secular State, the fundamental rights that are guaranteed to our people under the Constitution, the freedom that our people have won—and largely the people who are not inhabitants of India—which have also brought freedom to Pakistan, and the terms of co-operation with those who are our erstwhile opponent, with whom today we can disagree and still remain friends. It is those things that we value and that is why my Government has given me instructions to present this case as fully as possible, however much it may not be acceptable to concur with the observation that what has been committed in Kashmir is a violation of our territory; and any imprudent action could plunge the whole of our continent into bloodshed and civil war.

It is very wrong for the Foreign Minister of Pakistan—who ten years ago was a fellow citizen and even today is a very close friend—to tell us that these are threats. We utter no threats. What do we want to threaten anybody for? We are a very large country with no problems that we are not prepared to tackle. We only want to be left in peace. We have no desire to stop their waters or their money or their trade or anything of that kind. To the extent to which our home responsibilities permit, we are prepared to co-operate. It is not we who have turned our faces away from the sub-continent of India. It is Pakistan that has turned away from the continent of India and we have taken no notice of it. We still regard it as part of this ancient land whose heritage is common to both of us.

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It is in that spirit that we ask you to consider this problem and to give it all the consideration it requires. On behalf of the Government of India I am asked to pledge our faith that we shall never be found wanting in the methods of exploration but I think it is necessary to take a realistic view that the resolution of nine years ago, the conditions of nine years ago and the slogans of nine years ago—and if I am not out of order I turn to my colleague of the United Kingdom—and the newspaper campaigns in different countries will not shake our faith in what we regard as the righteous course of action that we took when we came here.

I want finally to ask: Why did we come here? Not because we were a weak country. The British left us a militarily strong country. They left us immediately after the war with nearly 2 million soldiers, a great part of them only just demobilized; the partition gave us a military position superior to that of Pakistan. Militarily we could have solved this problem any day, but that would not have been a solution. That is why we came here, and if this aspect of the problem is not taken into consideration it is not India alone that suffers—India's suffering will be momentary—but the Charter, the United Nations, which suffers because this is a penalty which is imposed upon those who will obey the law. We came here in full trust in the United Nations. For nine years we have been pushed from pillar to post and we have been castigated for allowing our people to express their will.

Do all you democratic countries say that the four and a half millions of Kashmir should have been ruled by the officials from Delhi without having the opportunity to express themselves in Parliament? You talk about those people who are imprisoned; is there any country around this table who has not got some skeleton of this kind in its cupboard? If there is, it is a happy country and we wish it well.

I am quite prepared to trust myself to Sheikh Abdullah. Let anyone show me anything that Sheikh Abdullah has said from the time when he became the leader of the national movement in Kashmir—which started as a Moslem movement and he gave it up and said: it is my country, Moslem or otherwise; he would not stand for that. He went to the Constituent Assembly and plainly offered them three alternatives: You can go to Pakistan; you can remain independent or you can go to India and he rejected the first two. I challenge anyone to show me one phrase uttered anywhere by Sheikh Abdullah—and he has now become the pet idol, although before he was called a Quisling—I ask anyone to show me one phrase where he says he wants to become part of Pakistan.

If we are told that we did not permit anybody in Kashmir to say that there should be a plebiscite, I would say that there is nothing further from the truth than that. One of the political parties in Kashmir which was allowed to fight in the election, which was registered as a party, whose emblems were on the ballot boxes, is called the Plebiscite Front. Its leaders are out, they campaign, they use even the mosques for propoganda and we have not denied them anything. How could we, with 70,000 people a year going there, with two or three hundred journalists in the place at any time, even if we wanted to? What is more, what would be the reaction upon the rest of India? Our country would not stand for that and if you suggest to us that there should be unsettlement, we say that unsettlement is the worst thing that the Security Council could wish for, not only for us but for the Asian continent. And I look to my Asian friends to think of that problem as well. The instability of any part of our world, which has just emerged into national birth is an instability that will affect everybody. Today our voice is not heard in high circles in Pakistan but we are without friends in that country. There is nothing that the Pakistan Government can ever use

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against us without exploiting any of their difficulties or using any of their dissidences, because our view is that we have our own troubles and they have theirs. If we can help them we shall do so, we do not want to hinder them. That is why for two years we have been sitting in Washington under the auspices of the World Bank discussing canal waters and so on and it might amuse the members of the Security Council to know that the greater part of the waters of the Indus runs into sea without going anywhere and what all this argument is, no one knows. But we are prepared to meet them and we have met considerable financial losses in that way. But we cannot get away from the fact that our country has been invaded, and that for nine years we have never used any phrase such as: "After the Security Council, what?" Because that is not the way to look at this problem. We are part of the Security Council even if we are not members, because all of you here represent us; and therefore we say there cannot be any solution to this problem except by recognizing what is called original sin.

We are prepared to have discussions, to find ways and means, but we cannot find those ways and means on the basis of an original wrong. This is not obstinacy; we have tried everything. This is the only way to deal with this problem and I believe Pakistan and ourselves can come to agreement on that basis.

My colleague quoted the Holy Koran. It is not the monopoly of the Moslem, and I will quote it for him—and not in the spirit in which it was quoted to me. One part of it, in the English translation, says:

> And whoever committeth a crime, committeth it to his own hurt. And God is knowing, Wise.
>
> And whoever committeth an involuntary fault or a crime, and then layeth it on the innocent, shall surely bear the guilt of calumny and of a manifest crime.

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